

Q. You say that General Motors in October, 1931, were agreeing to sell you a block of shares below the Stock Exchange price; is that right? A. That is correct.

Q. Did you not know that General Motors went on the Stock Exchange and bought the shares which they delivered to you? A. No, that is not correct; they came from 2468 Morgan and Company.

Q. Did not Morgan buy them on the Exchange at the request of General Motors? A. I have no way of knowing where Morgan got them from, but I think they were—they must have been owned by somebody connected with General Motors, either Morgan or maybe General Motors Management Corporation. I have no way of knowing that. But it certainly would not make any sense if they bought stock at a higher price and they offered it to me.

Q. No, if that were the fact.

In May, 1932, you got a power of attorney from Dr. Frankenberg to deal with Uebersee securities; is that right? A. That is correct. I think that is the second power of attorney I got.

Q. It was on the basis of the power of attorney which you received from Frankenberg that you directed the City Bank-Farmers Trust Company to transfer the funds to Uebersee; is that right? A. No, that is not right, Mr. Burling. I did not receive power from Dr. Frankenberg but from where it is signed by the officers of the corporation.

Q. I will read to you from your affidavit in the Gold Case at folio 171:

"At the end of May, 1932, I received from Dr. Frankenberg a further power of attorney dated May 9, 1932, 2469 of which a true copy is attached marked Exhibit

W. On the basis of this power of attorney I wrote City Bank-Farmers Trust Company on May 31, 1932, directing it to open an account in the name of Uebersee Finanz-Korporation A. G.,"

and so on. A. Not a power of attorney from Frankenberg. I understand that it is a power of attorney of Uebersee. It is an exhibit attached to the ~~old~~ Case. It is signed by, if I remember correctly, Dr. Frankenberg and, on the other hand, Dr. Henggeler or Dr. Meier.

Q. In the early months of 1932, you gave Dr. Frankenberg a proxy to vote Uebersee shares, did you not? A. That is possible; I don't remember it.

Q. Well, I will ask you to examine Exhibit L to your affidavit and state whether that refreshes your recollection.

Mr. Burling: This, if Your Honor please, is the minutes of the tenth regular general meeting of the plaintiff corporation.

By Mr. Burling:

Q. "Mr. Fritz von Opel, represented by Dr. Hans Frankenberg, Zurich, by virtue of written proxy of 497 shares."

A. Yes, that is correct.

The Court: You will be some few minutes longer, won't you?

2470 Mr. Burling: I have no more, if Your Honor please.

The Court: If you cannot complete it in a few minutes, it can wait?

Mr. Burling: It would greatly assist me if we could finish before the luncheon recess.

The Court: Very well.

By Mr. Burling:

Q. You recall that it was your father who suggested that Frankenberg should be made the major director of the holding company? A. I think I answered that before:

that I had discussed with my father and that I asked him whether—what he thought of Dr. Frankenberg, and I told him—I said, “I would like to have Dr. Frankenberg come on the board. He sold me originally the Uebersee Korporation.”

Q. In fact, you had a conference with Dr. Frankenberg at the very moment you received the first power of attorney, did you not? A. Afterward or in connection with it, yes. I received the first power—At this time, as I just stated, after I had received the first power, afterward I asked Dr. Frankenberg whether he would like to become a board member.

Q. Perhaps I misunderstood you. Did you not say to Mr. Gallagher that when you got the first power of attorney, Frankenberg was not in the picture? A. I stated—
2471 and—

Q. Well, did you or did you not state that? A. May I say what I feel I have stated?

Q. Surely. A. I think I have stated that Mr. Gallagher asked me whether the first power of attorney was signed by Dr. Henggeler, Dr. Meier, and Dr. Frankenberg; and I said, “No, none of the three were yet members of the board. It was signed by Dr. Martin Bloch.”

That is what I have stated.

Q. At any rate, right after you stated that, Frankenberg agreed to become a member of the Board of Managing Directors of the Korporation, did he not? A. Yes; all three of the gentlemen.

Q. They were not all three managing directors, were they? A. Not managing directors; board members.

Q. Frankenberg also agreed to become managing director? A. Yes.

Mr. Burling: That is all.

Mr. Gallagher: That is all.

(The witness left the stand.)

Mr. Boland: We will recall Dr. Kronstein.

Thereupon, Dr. HEINRICH KRONSTEIN was recalled
2472 as a witness and, having been previously duly sworn,
testified further as follows:

Direct Examination

By Mr. Boland:

Q. Doctor, you were here during the course of the testimony of Miss Schoch, the Government expert on German law, were you not? A. Yes, I was.

Q. You heard her testimony? A. Yes, I did, sir.

Q. As a result of her testimony, do you wish to change your testimony in any sense of the word? A. No.

Q. Did you hear Miss Schoch discuss certain court decisions of Germany in respect of sham transactions? A. I did.

Q. Do you have any comments to make on those cases, Doctor? A. Those cases show that even original documents can be *scheinvertrag*. I never denied that.

Q. So it is your opinion that they add nothing to the case?

By the Court:

Q. There isn't any difference in the German law with regard to what is sham from what is in the American
2473 law, is there? Your approach is just the same? A
sham is a fake transaction, not an honest transaction, not a true one? On the face of things it is regular, but if we disregard the face of the instrument or the face of the transaction, and something else is the true situation, it is a sham in German law; isn't that true? A. German law distinguishes between two different types of sham. One type of sham is when two parties agree that it is a

contract, when it is not a contract at all. Another type is if those parties agree to A but write B.

Q. I understand. A. That is the first of two types. Then, the second type, if A is valid but not B, nothing is valid.

The Court: That is exactly the same as in American law.

A. The only difference is that the German contract is something different. But the whole approach is a question of *scheinvertrag*.

Q. That is what I mean, yes. A. It is a question of evidence.

By Mr. Boland:

Q. Changing the subject slightly, Doctor, Miss Schoch testified that in analyzing Plaintiff's Exhibit 5, which is the gift agreement, and the Hachenburg drafts and letters—so-called Hachenburg letters—which I think are Plaintiff's Exhibits 7, 8, and 9, she came to the conclusion that 2474 the father had intended to have a right in rem created in the future.

On cross-examination, I believe, she testified that this right of the father was an in personam right against the donee—the son—to create a usufruct as a right in rem in the future.

Do you believe that such an interpretation is a reasonable interpretation? A. That is a possible interpretation. I believe it is my possibility No. 2 in my scheme of possible interpretations.

Q. So that being a reasonable interpretation, it is, in fact, your No. 2, is it not? A. Yes, it is my No. 2.

Q. There was one qualification. I am not sure of the significance Miss Schoch placed in this, but she said, "in the near future." Is that a reasonable interpretation of those letters? A. May I see the documents?

Q. Yes (handing papers to the witness). A. I do not see any reference in the Hachenburg draft to the time when the demand might be made. It just states that Mr. Fritz

von Opel is entitled, and upon demand of the donors obliged, to assign shares to a holding company which he owns. In this case the parents would have the use of a usufruct.

Q. Let us assume that "in the near future" were a 2475 reasonable interpretation of those papers.

The Court: Excuse me. May I see that a minute?

Let me tell you what I think she said. I may be wrong, but I thought there was some language in here—Is this No. 5?

The Witness: No.

Mr. Beland: No; these are the Hachenburg papers.

The Court: I may be mistaken, but I would like to ask you this myself, whether she said it or not. I thought she took this language which immediately follows the transfer of the title to the shares:

"Usufruct in the shares is not assigned to Fritz von Opel; it remains with Wilhelm and his wife until both,"

and so forth.

I understood her to say that that indicated, in her mind, that that was to have come about immediately or in the very near future; and that it was simply a mistake of the draftsman that those words of conveyance were not included. I think that is what she stated.

The Witness: That is based on one point. My friend, Miss Schoch, believes that usufruct can only mean having a right in rem; but it can have different meanings.

The Court: I thought she agreed to that, but she said that that language, as I understood it, was one of the reasons—that, as well as this language of the previous 2476 lawyer—that indicated to her that it meant in personam. That is what I understood.

By the Court:

Q. Do you think there is any significance to that language, that this usufruct in the shares is not assigned; it remains

with him and his wife? Does that rather positive statement indicate to you that that might tend to show that the donors wanted to keep the right with them at that time or sometime in the immediate future, rather than some indefinite future? A. The parties agreed on a contractual right. The Opel parents shall have a contractual claim for income, since they do not include conveyance.

The Court: I do not know that it is a question of law anyway.

Mr. Boland: The only point in this question, Your Honor, is to bring out this: Let us assume that they did contemplate "in the near future." What, in effect, would have occurred if they did not set it out?

The Court: He agrees to that.

Mr. Boland: I am not sure I asked her that question.

The Court: I made it perfectly clear before she left the stand that if there came a time when there was some word of conveyance or some delivery to him or his agent, the actual right in rem did not occur. She certainly said that.

2477 Mr. Boland: That is true, but she did not testify as to what effect there would be legally if the original intent of the parties was that they create a right in rem in the near future and, in fact, did not.

The Court: All right.

Mr. Boland: If there is not some legal significance to that position, I think we are very close to being in agreement on what the law is.

The Witness: It has no effect on the contract.

The Court: You can ask him that. Until there comes a time when they would specifically perform, then no absolute right lodges.

By Mr. Boland:

Q. So if no demand had been made by the donors of this gift agreement, if it meant that the intent was that one be

created in the near future, and if in fact no demand had been made, it would have no effect on the contract? A. No effect on the validity of the contract.

Q. Doctor, you heard Miss Schoch, in a long dissertation and analysis of laws concerning foreign funds control, describe why and how the Reichsbank director had nothing to do with the issuance of licenses in respect of waiving rights of the donor. You have had quite a bit of experience in practicing in Germany under the foreign 2478 exchange laws and regulations, have you not? A. I have.

Q. From your experience and practice, would you attach any significance to a statement of clearance by the Reichsbank director to this effect: that our lawyers have gone over the problem carefully, and we have come to the conclusion that no court action can be taken; that, in effect, our hands are tied?

Would that have any significance to you as a German practicing lawyer, familiar with this foreign fund problem?

A. That would have very much significance for me. It is perfectly correct, what Miss Schoch said, that the licensing authority is a section of the Department of Commerce, but under the director of the Reichsbank, handling the entire collecting of foreign currency, and whenever a lawyer had such a problem, he was perfectly accustomed to go to the Reichsbank, because—at least, that was the feeling of every lawyer—that was where the decisions were made; and Mr. Wilhelm had such a high position, so high that I believe I would not have even dared, in the Nazi state, to say, "I don't believe, Mr. Wilhelm, if you tell me that you have this decision on the basis of a discussion with the Department of Commerce"—I would not even have dared to write a letter and say, "I would like to have that in written form by the Department of Commerce."

Mr. Burling: I move to strike that as not being a legal answer. The witness testified that he agreed with

2479 Miss Schoch that Wilhelm had no jurisdiction in the matter, and the waiver would have to be written.

The Court: I will let it stay in and will let you argue it a little later.

By Mr. Boland:

Q. Coming back to October 5, 1931, and considering the evidence that Wilhelm von Opel had 600 shares of stock in an escrow agreement located in New York City—Are you familiar with the escrow agreement? A. I have seen it.

Q. Now, was there any way in which Wilhelm von Opel, assuming that his primary motive and purpose would be to protect those shares as an American asset here in America for his own protection, should he ever desire to leave Germany—was there a way available for him to accomplish this purpose without having gone through the gift agreement? A. Yes, I think so.

Q. How could he have accomplished this purpose? A. One would be to extend the agreement for as many years as General Motors would agree with him.

Q. To extend the escrow agreement? A. To extend the escrow agreement.

Q. You know, do you not, that the escrow agreement by its terms would have expired in 1934? A. Yes.

2480 Q. So what you mean is— A. Extend it without any license at the time when the gift agreement was made.

Mr. Boland: Thank you. That is all we have.

Cross Examination

By Mr. Burling:

Q. I correctly understood you to testify, did I not, that you agree with Miss Schoch that, technically speaking,

the Reichsbank did not have authority to grant waivers or to declare that waivers were unnecessary? A. Technically, yes; but practically, no.

Q. I see. But, as a matter of technical law, an oral statement made by Wilhelm would be of no value in a defense to a prosecution; isn't that true? A. Mr. Burling, practicing law in Germany in 1935—December, 1935—when I left, especially in the matter of currency, was not a matter of law; it was a matter of false power and diplomacy.

Q. But insofar as there was any law, as you understand the concept of law— A. As far as—

Q. Wilhelm's statement would have been irrelevant, wouldn't it? A. Irrelevant. Even under the regular situation, I couldn't see it. If the highest next to the 2481 president of the Reichsbank—the highest official tells me, or one of the very highest officials of the Reichsbank tells me, that is the case, and I have discussed this matter with lawyers, I couldn't see it is of any significance.

The Court: He is making the same distinction as if the Attorney General would say it over here and the Supreme Court might say something to the contrary.

The Witness: That is possible.

Mr. Burling: If Your Honor please, not quite that. It is more like the Chairman of the Federal Reserve Board.

The Court: I understand the distinction. That probably was not an apt illustration. Yes, I see. I have your point.

Mr. Burling: I have no more questions.

Mr. Boland: We have no more questions.

Mr. Gallagher: We have no more questions, and we have no further witnesses.

Mr. Baum: On the question of exhibits, we have gone through the record, and we find that there are ten or fifteen exhibits which we neglected to offer in the course

of the testimony; and I also note in the record that we have, in the case of a great majority of the exhibits, the whole number, such as Exhibit 2, and the translation; such as 2-A. I think I would like to arrive at an understanding with counsel that where one number is offered, both may be considered as exhibits.

2482 The Court: That is all right.

Mr. Gallagher: I have no objection to that where one is a translation.

The Court: That applies to both sides. All exhibits that have been heretofore identified in the German and the translations that have been identified may be received in evidence where either one has been received. That is by stipulation of the parties.

Mr. Baum: Now, the list of exhibits which have not been offered are—

The Court: I will tell you what I think you should do. I think you should show that to Mr. Gallagher, and if there is any objection, I will let you argue it. But you let me know.

Mr. Baum: May I note just two, Your Honor. Two of them are reporter's mistakes. Defendant's Exhibit 43 has come into the record as received in evidence as 43-A, and there is no 43-A. Defendant's Exhibit 68 is marked received as 69, which means there are two 69's. If that can be corrected—

2508

PROCEEDINGS

The Court: Gentlemen, I have arranged, now, to give you today to argue this, and as much time as you need on Monday to conclude. I hope you will try to conclude before noon on Monday, if possible. I shall probably have to adjourn today between half past 3 and 4. Are you ready to proceed?

Mr. Gallagher: Your Honor, we have pending before the Court the question of the deposition of Mrs. von Opel which was taken on yesterday. The Government's official copy has not arrived; but anticipating that perhaps there would be a delay, I brought a report from New York with me, and I have tendered the Government a copy of that deposition. I feel at this time that before we renew any objections, and before we go forward with our closing argument, we should have a determination of the question of Mrs. von Opel's testimony.

The Court: What is the question about it?

Mr. Burling: I believe it is in the form of a motion made by me on the ground of newly discovered evidence. I believe Your Honor reserved ruling on that pending the taking of Mrs. von Opel's deposition.

I now renew the motion and ask leave to read Mrs. von Opel's deposition into the record.

Mr. Gallagher: We have no objection.

The Court: All right. Then, the motion is granted.

Mr. Burling: We do have a mechanical problem.
2509 We have only one copy. If counsel would be good enough to let us have two momentarily, we can read it with more facility.

Mr. Gallagher: There are just a couple of corrections that, to my recollection, should be made. I do not have the other copy of the report. I have no objection to pointing them out to Mr. Burling, and the reading will be subject to correction when we get the official copy. Is that all right?

Mr. Burling: That will be all right.

(The deposition of Margot von Opel was then read to the Court. Mr. Burling read the questions on direct examination, and Mr. Baum read the answers.)

Mr. Burling: This is the direct examination by Mr. Baum of Mrs. von Opel:

"Q. What is your full name? A. Margot von Opel.

"Q. And you live at this address, 433 E. 51st Street, Apartment 120, New York City?"

Mr. Gallagher: Just a moment, Mr. Burling. If I might suggest it, will you have the record reflect that the oath was administered prior to the taking of the testimony?

Mr. Burling: Yes; the reporter administered the oath prior to the taking of this deposition.

(The reading of the deposition was continued as follows:)

"Q. And you live at this address, 433 E. 51st Street, Apartment 120, New York City? A. Yes.

2510 "Q. You are the wife of Mr. Fritz von Opel? A. Yes.

"Q. And you and Mr. Fritz von Opel were married in 1929? A. Yes.

"Q. And you have lived together as husband and wife since that date? A. That is correct.

"Q. Mrs. von Opel, I call your attention to the year, 1937—April, 1937. Do you remember where you were at that time? A. I would not know.

"Q. Do you recall that in April, 1937, Mr. Fritz von Opel was on a trip? A. I was in Berlin then.

"Q. And do you remember that Mr. von Opel came to Berlin from Essen in April, 1937—the end of April, 1937? A. I do not remember but since I saw the letter that I have written to Mrs. Langnick, I did say that he had come. I could not tell.

"Q. You are now referring to an excerpt from a letter you wrote on April 28, 1937, which I presume Mr. Gallagher has shown you? A. That is correct.

2511 "Q. In that letter you stated Mr. von Opel came the previous day and would stay with you until Friday of that week? A. Could you show me the letter?

"Q. Surely. I show you the excerpt of the letter of April 28, 1937 (hereinafter referred to as Exhibit A) for the purpose of assisting the witness to answer.

(Witness reads.)

"Q. Who was Mrs. Langnick, by the way? A. She was our secretary and very good friend.

"Q. When you say 'our friend' you mean Mr. von Opel as well as yourself? A. Yes.

"Q. You said in that letter that Mr. von Opel would remain with you until Friday and then would return to St. Moritz via Russelsheim where he expects to have a conference with Dr. Frankenberg. A. That is what I wrote.

"Q. And how did you know Mr. von Opel was going to have a conference with Frankenberg in Russelsheim? A. Perhaps he told me—I don't know—or perhaps he had planned it before.

"Q. Mr. von Opel told you that before? Had Dr. Frankenberg told you he was going to be in Russelsheim? A. That is not true.

"Q. You were told by Fritz von Opel that he was planning to have a conference in Russelsheim with Dr. Frankenberg? A. Yes. Mr. Baum, I must say all I know about this is what I wrote in that letter.

"Q. But what you wrote in that letter is correct? A. What I wrote in that letter is correct, yes.

"Q. Now I will draw your attention to December, 1940, at which time I believe you were in the United States?

"Mr. Gallagher: For the record, the exhibit you have now directed Mrs. von Opel's attention to will be marked Exhibit B.

"Q. I asked you, you were in the United States on December 24, 1940, were you not? A. Yes.

"Q. And at that time you wrote a letter to Mrs. Langnick bearing the date of December 24, 1940, and containing

the language which appears in the excerpt Exhibit B, is that correct? A. Yes.

“Q. I call your attention to the statement in that letter which, in English, reads, ‘To be sure, it was high time—and a true piece of luck—’ A. How do you translate it ‘to be sure’? How do you get that?”

“(Off the record discussion of the translation.)

“Q. (Continuing) ‘To be sure, it was high time—and a true piece of luck that Frankenberg came over with us who continued to kick our little master until he cleaned up the mess in Shreveport.’ A. Where does the word ‘kick’ come in? Our ‘treten’ is never ‘kick.’ Certainly not. You can say he ‘sat upon him.’ We use that word when we make wine. It means to ‘stamp’ or to ‘work on a person.’ You never say ‘kick.’ ‘Kick’ would mean that you pushed somebody.

“Mr. Gallagher: How do you translate the word ‘treten’, Mrs. von Opel—to ‘work on somebody’?”

“A. I would say ‘working on somebody.’

“Q. Did you make that statement, Mrs. von Opel? A. I did.

“Q. And what did you understand by the expression ‘the mess in Shreveport’? A. First, I know Fritz was losing very much money down there and he was talked into this whole thing by people I did not believe in. That was Crittenden and Mr. Grogan. They were brought to Fritz as far as I know by Mr. Hoffacker, whom I personally had thrown out of the house in St. Moritz; so I had no reason to believe the other people were any better.

Then I knew from conversations that Fritz had lost money there and when I came over here and saw a great deal of Dr. Frankenberg, I had hope that Fritz would stop that down in Shreveport and I asked Dr. Frankenberg to

influence Fritz as much as he could, that Fritz should give that up and I wish Fritz would listen, but he never listens—he gets mad at him.

“Q. And do you remember when you came to the United States, Mrs. von Opel—in about the year 1940? A. Oh, that was on the 8th of May, 1940.

“Q. And Dr. Frankenberg came over on the same boat? A. He came with me and with a friend of mine, Mrs. Schwarzenbach. She is dead.

“Q. And is it your testimony, Mrs. von Opel, that to your knowledge Dr. Frankenberg worked on your husband Fritz to clean up the mess in Shreveport? A. I made that statement.

“Q. And it is correct? A. It is correct. He did it because I asked him to do it.

“Q. You asked who to do it? A. I asked Frankenberg to help me—to ask Fritz to give up the work in Shreveport.

“Q. And Dr. Frankenberg you knew was a director of the Uebersee Finanz-Korporation at that time, did you not? A. Yes. He really has tried his best to give Fritz advice. Fritz never listens.

“Q. Well, apparently Mr. von Opel listened in this case, since you say he did clean up the mess in Shreveport. A. That is correct.

“Q. Now I draw your attention to November, 1939. I show you a paper, which will hereinafter be known as Exhibit C. A. She was in Germany when I wrote this letter.

“Q. Who? A. Ruth—Mrs. Langnick.

“Q. Now this excerpt, which will be referred to as Exhibit C, purports to be an excerpt from a letter from Mrs. von Opel to Mrs. Langnick written from Zurich and dated November 18, 1939, which reads as follows:

“There can be no question of American citizenship. I should like to know who continues to put such rumors into circulation, most likely Dr. P. whom I dislike doubly since his failure toward you. It is true, in this direction various

other matters have transpired which became necessary because of the business over there.

"You made that statement, Mrs. von Opel? A. Yes, I did. X

"Q. And it is correct? A. It is.

2516 "Q. It would appear you were referring to a question raised by Mrs. Langnick as to whether someone had become an American citizen. Who was the person involved? Was it Mr. von Opel? A. Yes.

"Q. Now, the last sentence which I read you—'It is true, in this direction various other matters have transpired which became necessary because of the business over there,' Would you state what that sentence refers to? A. You must understand I wrote this letter into Nazi Germany. All letters were opened and censored. Mrs. Langnick had, on account of us, very many difficulties in Germany and I was all the time worried about her because she had been with the German-Russian Petrol Company before she came to us and then she became our secretary and couldn't get another job. This is what I refer to when I say that Dr. Pilder I disliked anyway and as far as I remember I had tried to get her in at the Dresdner Bank and Pilder would not take her on account of her—call it political outlook, and so on.

"Q. Now, Mrs. von Opel, this excerpt which I read you refers to citizenship. That is what I am asking you about.

A. I understand that very well, and when I say in 2517 that letter that other things had developed which were necessary on account of business, I meant that in case people tell her, or there are rumors, that we have changed our citizenship, which will certainly be considered in Germany a crime, it would reflect on her. So I said it was done for business reasons.

"Q. In other words, in that sentence you are referring to the fact that you and your husband had become citizens of Liechtenstein? Of course, on that date you had not yet

become citizens of Liechtenstein, had you? A. What is the date?

"Q. November 18, 1939. A. Oh, I thought it was October. November 10th, and confirmed by Parliament on November 21. That is as a member of the community of Planken and formal adoption on the 21st of November.

"Q. And you said this citizenship was acquired for business purposes, is that correct? A. To give her protection.

"Q. Why did she need protection? A. Because she had any way so much trouble from knowing us.

"Q. Oh, I see.

"Now, Mrs. von Opel, I draw your attention to the year 1946. Did you have conversations in July, 1946, 2518 with your husband concerning the subject of the usufruct? A. When?

"Q. In July, 1946. A. That is very likely.

"Q. Isn't it true that you and your husband tried to analyze the origin of the usufruct which is contained in the gift agreement—Plaintiff's Exhibit 5—which related to the 600 Opel shares? A. When you ask me this way I certainly couldn't tell you whether it was a certain month, day or hour. I certainly had conversations with Fritz about it. We talked about it at all times.

"Q. I am not asking you for any particular day, Mrs. von Opel. I am asking you whether around July, June, or a month in 1946 you discussed the origin of the usufruct with your husband. A. Possibly.

"Q. Why were you worried about the usufruct in 1946? A. The property was vested and as far as I understood the vesting order was because the Government had the absolutely absurd and crazy idea that the money did not belong to Fritz.

"Q. You did know the usufruct had been waived in 2519 1935, did you not? A. It had been waived, yes.

"Q. I see, and you came to the conclusion in 1946 that the origin of the usufruct was the distrust of your father-in-law, Wilhelm von Opel, towards his son, Fritz

von Opel? A. I don't understand the word 'trust.' Please repeat that.

"Mr. Gallagher: I would like the record to show that this deposition is being taken of Mrs. von Opel while she is in bed recovering from an operation and with a perforated ear drum.

"A. And continuously under medication and I am dizzy.

"Q. Reread the question. (The question was read.) A. 'Distrust' is not the word. As far as I know about the usufruct—Am I entitled to see this letter? So far as I know about this usufruct it was at that time made when my father-in-law gave my husband the money and we were just married and the old man was afraid that we would spend too much money.

"Q. You knew a Dr. Daniel Gros, did you not? A. Yes.

"Q. And he was a lawyer in Germany? A. Yes.

"Q. Did you not write him in July, 1946, referring to the usufruct, 'In trying to analyze its origin one finds
2520 that it grew from nothing but a distrust of a father
against his own son'? A. How did I write that in
German?

"Q. I will now show the witness a photostatic copy of what purports to be a letter dated July 22, 1946, to Dr. Gros from Margot von Opel, hereinafter referred to as Exhibit D. A. (Reads the excerpt.) I remember the letter.

"Q. Did you come to the conclusion in 1946 that the origin of the usufruct was the distrust of a father against his own son? A. I used in this letter 'misstrauen.' That would be translated 'distrust.' That is correct because, as I told you, when we married, the old man had the idea we would spend too much money and I call that mistrust. To start out with, it is more in the word. What I mean is that the old man did not trust his son when he married me. He thought it was a crazy idea and that I would do nothing but spend money.

"Q. Did that mistrust continue throughout the years?

A. No.

"Q. But anyway, in 1946 you believed the origin of the usufruct was that mistrust as you described it? A. Yes.

"Q. Now I am coming to another topic. Is it correct to say that the family relationship between Wilhelm and Fritz von Opel was psychologically extremely complicated? A. I think it was not more complicated than all human relationships are.

"Q. Didn't you tell Dr. Gros that it was? A. That is what I write in this letter, definitely. But I believe all human relationships are terribly complicated.

"Q. And isn't it right to say these complicated family relationships are the only explanation for the never-ending distrust—almost fear—of the son for the father? A. You must understand, Mr. Baum, that I have worked for a psychiatrist and sometimes I go perhaps a little bit too far when I analyze things. There is certainly the father-son complex—something very complicated.

"Q. Did you not tell Dr. Gros that there was a never-ending distrust? A. That is what I write.

"Q. And you told Dr. Gros that? A. Yes, but I refer to the conclusion I come to. You must understand that as you read this letter. At that time Fritz was always risking his life with sporting things; I had gone through the experience of having gotten interned—getting afraid of life—and I would say, 'Good God, what is going to happen to me if something happens to Fritz.' Then I said I couldn't suggest to the old man to change this in his will and I said because what would it help. I would sit here without a penny and I didn't want to suggest that to Fritz because I think it is an awful thing to say to somebody—what is going to happen when you die. I don't like to do that.

"Q. Whether or not you were concerned as to what would happen in the future, you did state, and now state,

there was a never-ending distrust between Wilhelm von Opel to his son, Fritz von Opel? A. I put first of all 'misstrauen' in quotation marks in this sentence.

"Q. May the record show that 'misstrauen' refers to the English word 'distrust'.

"And you thought there was a curious shyness—almost fear—of your husband Fritz towards his father, is that correct? A. I wrote that.

"Q. Is it correct? A. I must have felt about it that way at that time. And it is correct. Every son has a feeling that he has to prove to his father that he is a superman or something like that. Fundamentally, the old man was scared of Fritz.

2523 "Q. Now, Mrs. von Opel, you have been married some twenty years, is that correct? A. That is correct.

"Q. What has been your relationship with the mother-in-law in those twenty years? A. Not too good.

"Q. Not too good? A. We get along, but I don't like her.

"Q. And she doesn't like you, is that correct? A. She writes me very sweet letters.

"Q. But she doesn't like the people with whom you are friends, is that correct? A. I wouldn't be surprised.

"Q. And she doesn't like the way you live, is that correct? A. I wouldn't be surprised.

"Q. That is what you told the Hearing Board in Miami, isn't that so? A. Yes.

"Q. And you also told the Hearing Board you didn't like your father-in-law, didn't you? A. I don't think I ever said it that way. I said I get along with them and I respect them. It is a different word for me.

2524 "Q. Did you not tell the Hearing Board in Miami, 'I don't get along with the old man but I respect

him? A. It is possible, I said it and if you read it out of the record, it must be correct.

"Q. Did you ever know a man by the name of Eric Deku? A. God forgive me, yes!

"Q. Did you ever tell Mr. Eric Deku that people think you are wealthy but in reality all your wealth belongs to the parents of your husband? A. He is crazy!

"Q. I am not asking if he is crazy. I am asking if you ever said that. A. I never said a thing like that. He was one of my special friends who always had a pleasant time meeting me because I told him he is a crook. I even told him that he is interested to have Fritz killed, because of his idea of flying a balloon in the middle of the night and wrecking it, almost, in Germany. I said he must have great interest in having Fritz killed.

"Q. Who was flying a balloon in the middle of the night? A. Fritz.

"Q. And when was this? A. Sometime in the thirties at the time when we knew Eric Deku—I don't know just when.

2525 "Q. Would it be correct to say it was sometime between 1932 and 1936 or 7? A. That could be.

"Q. Now, Mrs. von Opel, I believe that for the moment I have only one more question. Will you describe in detail the circumstances under which you had dinner with Adolf Hitler? A. I knew Leni Riefenstahl. She was a movie actress, a sports woman, a kind of crazy person. I knew her, I think, from 1925 on. She was making at that time the picture of the Olympic games. I must say she was an excellent movie director.

"Q. That was in 1936, was it not? A. Yes, 1936. And I was on my way down to Switzerland coming from Kempen, and going down to Switzerland Leni told me that she is going to finish some sport pictures in Nuerenberg and asked me whether I would come with her. I disliked the idea because I wanted to go on and I disliked the idea

of spending days with her, but Fritz said to me, 'You better go, you'll probably laugh your head off when you see all these people down there. So I went, and at the evening we went to the hotel to have dinner and at the same hotel Mr. Hitler was with his gang and he sent over to us to the table his adjutant, who came to me and said, 'Pardon, you are arrested.' I looked up and said, 'Good God, 2526 don't make jokes!' because I did not feel very safe there. I had the feeling I was really sailing under the wrong flag sitting there. But he said, 'You are arrested to have dinner with the Fuhrer.' And he turned to Leni and asked her to join them also. Leni was delighted and I said I think I better stay here with the cameramen and she said no, no, no, you must come, must come. So we both went over there and we certainly had no dinner because nobody gets anything while this man was talking. I wanted a glass of wine but she said in the presence of the Fuhrer there was no wine. He himself was drinking almond milk. The conversation between him and Leni did not stop, as though she had known him all her life. It was too beautiful for words, because she was sitting there, almost on her knees in front of the Fuhrer, and he said, 'In the year 1943 you are going to make for me the bible of the Nazi Movement,' and Leni, with her hands like in prayer, said, 'My Fuhrer, my Fuhrer, how could I ever have the strength?' And he banged his fist on the table and said, 'The strength I am going to give to you.' And she was absolutely swooning. And then she got up. I never have seen such manners in my life. They left us sitting there, their hands raised in 'Heil Hitler.' And I said to Leni, 'Good God, what are you doing in a situation like that?'

2527 "Q. Now, Mrs. von Opel, you went to Germany practically every year through 1939, did you not?

A. Yes.

"Q. I believe that is all now. I would like to ask that in event the files arrive before we have concluded, I may be permitted, if I find it necessary, to ask any additional

questions based on the letters in that file. I think in fairness we can't hold up the deposition indefinitely today.

"Mr. Gallagher: Certainly."

(The questions on cross-examination were then read by Mr. Gallagher, and the answers were read by Mr. Boland.)

"Q. Mrs. von Opel, when you use the phrase 'too beautiful for words' to describe Leon Riefenstahl's actions and all, I gather from your manner when you are saying it that you are being sarcastic? A. Certainly.

"Q. Mr. Baum asked you some questions and showed you a letter which you wrote to Dr. Gros in 1946 and identified as Exhibit D, and drew your attention to the fourth page where you state therein, 'I suggest that my father-in-law, if he agrees to modifying the contract, write directly to Fritz informing him about it and leaving me out altogether.'

"Would you state what portion of the contract you 2528 are asking Dr. Gros to talk to Fritz and the father about modification? And in connection with that sentence, I also draw your attention to page 2, the fourth line thereof, in which it states, 'It seems absolutely crazy to leave this provision in the contract.' Now, will you state as to those two portions of the letter what you were talking about? A. I was talking about the reversion.

"Q. By that you mean that the fact that if Fritz were to die without issue the parents Opel would have the legal right to get back Fritz's money and that would leave you with nothing, is that correct? A. That is correct.

"Q. Now, Mrs. von Opel, in 1939—November of 1939—you and Mr. von Opel became citizens of Liechtenstein. The defendants have stipulated that to be a fact. Would you state the reason why you and, if you know, why Fritz became citizens of Liechtenstein? A. Because we wanted to denounce our German citizenship."

• Mr. Burling: "Denounce" should be "renounce."

(The reading of the deposition was continued as follows:)

"Q. By that do I understand you to mean you no longer wanted to be considered Germans by any fashion
2526 under the law? A. Yes.

Q. Now, you stated in connection with Exhibit B, which is the letter of December 24, 1940, in which you said, —and a true piece of luck that Frankenberg came over with us who continued to kick our little master until he cleaned up the mess in Shreveport, that you asked Frankenberg to work on Fritz von Opel. At that point I wish to ask you this: Why did you call Fritz von Opel 'the little master'? A. That is a long story.

"Q. Can you state the story briefly? A. The first secretary we had was called 'Poodle' and when you talk about your master from Poodle's point of view you call him 'herrchen.' It has nothing to do with little master.

"Q. Now, when you say that you asked Frankenberg to work on Fritz, would you state again in general what you told Frankenberg and what you asked him to do? A. You see, I had discussed quite often with Frankenberg matters concerning Fritz because I was very often worried that he didn't take advice from anybody under God's sun and he was running for that reason, not knowing people too well, into lots of difficulties and Frankenberg was a very conservative man. I always had hoped he would have some influence on Fritz.

2530 "Q. Frankenberg was a friend of yours and a friend of Fritz'? A. Yes.

"Q. Did you ever hear Frankenberg give Fritz any orders? A. Orders! Certainly not! He has advised him. First of all, he is a much older man, he is a banker and Fritz was working at the factory—he was an excellent mechanical engineer but I don't think that he understands

too much about industries and so on. That was the reason why he got into the hands of crooks.

"Q. Now, did you ever hear Frankenberg tell anybody that he was Wilhelm von Opel's agent for the purpose of safeguarding this gift Wilhelm had made? A. That is ridiculous.

"Q. Now, Mrs. von Opel, in connection with Exhibit A, which is an excerpt from a letter of April 28, 1937, in which you state that Fritz is going 'to St. Moritz via Ruesselsheim (Saturday and Sunday) where he expects to have a conference with Dr. Frankenberg,' could you tell me why you put Saturday and Sunday in that letter and in parentheses? Do you have any recollection? A. Yes.

"Q. Would you state what that is? A. I did not believe Fritz was going to Ruesselsheim at all.

2531 "Q. And why did not you believe that, or did I understand you correctly then that the parentheses indicated your disbelief? A. Yes, I think he went away for the week end, just as I made the crack here about the geese with feathers. Because I think perhaps usually he was chasing the girls, but this time he was really going out for geese.

"Q. And do I understand you to say that the parentheses indicated you did not believe this story? A. Yes.

"Q. Now, let me ask you this. On April 28, 1937, do you know whether Wilhelm von Opel was in Ruesselsheim or Wiesbaden, or any point in that area? A. No, he was not. He was in South America.

"Q. On April 28, 1937, he was in South America? A. He was in South America.

"Q. And do you have any recollection as to when he went? A. He left on the Caparcona with Count and Countess Edelsheim.

"Q. Did Fritz ever tell you whether he had ever given any money to Count Edeisheim for his father on that
2532 trip? A. Yes, he did, as far as I remember.

"Q. Do you have any idea about how much he gave

the Count for the father? A. It could be around 1,000 pounds; or something like that.

"Q. So then, if I understand your testimony correctly, on April 28, 1937, it would have been impossible, even if it were true, that Fritz von Opel was going to meet with Frankenberg in Ruesselsheim, for Wilhelm to have been there, inasmuch as he was in South America? A. He certainly was not there. I doubt very much if there was ever a conference with Frankenberg. I don't even remember that Frankenberg ever went to Ruesselsheim. When he was a man of around 25, Frankenberg may have been in Ruesselsheim, but as far as I remember, Frankenberg was never in Ruesselsheim.

"Q. Did you ever hear Dr. Frankenberg, Wilhelm von Opel and Fritz sit down and have any discussion about the proceeds of this gift or about the American corporations? A. Never.

"Q. To your knowledge, did Wilhelm von Opel ever give Fritz von Opel any instructions as to what he was to do with the gift or the American corporations? A. Never.

"Q. To your knowledge, did Wilhelm ever request 2533 any dividends or sums from Fritz? A. Never. Why should he? He had all the money he wanted in Germany.

"Q. Now, you stated at the Miami hearing to which Mr. Baum has referred—By the way, what was your physical condition when you were in Miami? A. I was not well.

"Q. You stated at that time that you did not like the father but that you got along with him. What, however, were your relations with the father during the 1930's? Were they good or bad? A. They were friendly. He came every year to our house, and would continue there for a couple of weeks, and I tried to give him a good time.

"Q. That was the house at St. Moritz? A. Yes.

"Q. If I understand you correctly from your previous statement in response to Mr. Baum's question, you were

apparently not friendly in 1929 when you were married, but thereafter, during the thirties, you became friendly with the father. Is that correct? A. Yes.

"Q. Now, Mrs. von Opel, you have a home in St. Moritz, do you not? A. Yes."

2534 Mr. Gallagher: At this time we recessed due to the arrival of Mrs. von Opel's doctor. He had to "shoot her up" a little bit.

(The reading of the deposition was then continued:)

"Q. Mrs. von Opel, you have maintained your home in St. Moritz since about 1934, I believe? A. 1932. We bought the house in 1932. In 1933 it was remodeled.

"Q. Do you have any ornamentation on your house at all? A. What do you mean—ornamentation?

"Q. Do you have any flags or decorations on your house at all? A. Certainly. I always had the flag out when we displayed flags.

"Q. What flag did you display? A. Liechtenstein.

"Q. Do you have any friends in Liechtenstein? A. Many.

"Q. Did you have any friends, any members of the royal family of Liechtenstein? A. Yes.

"Q. Will you state who that is? A. Prince Constantin.

"Q. Is Mr. von Opel also a friend of Constantin? A. He does not know Tino.

2535 "Q. Are you a friend of his wife? A. Yes, I know her very well. She is a daughter of Count Wilczek from Vienna.

"Q. In view of the fact that there has been a recess while your doctor was here, I can't quite recollect whether I asked this question or not. You know of no income or dividends or payments of money or the like to Wilhelm von Opel by Fritz? A. No, he never made any.

"Q. Did you ever hear Wilhelm ask Fritz for any accounting or statement or information about the American corporations owned by Fritz? A. No. He only asked Fritz sometimes how the business is and whether it is good or bad and I think Fritz had always been a little afraid his father might find out he has lost money, because when the old man gave him the money he said to him, 'If you can keep, under the times in which we are living, just that which you have, that is a great achievement nowadays' and when Fritz was losing money in Shreveport I think he always felt a little ashamed that he was not living up to what the old man expected of him as a business man.

2536 (Mr. Burling then read the questions on recross examination, and Mr. Baum read the answers.)

"Recross Examination by Mr. Baum"

"Q. Now, Mrs. von Opel, you said Dr. Frankenberg was a friend of yours and of Fritz. He was also an old friend of Wilhelm von Opel, was he not? A. He was not an old friend. He knew him. You see, we make a difference between a friend and an acquaintance. Frankenberg was a friend of us and an acquaintance of Wilhelm.

"Q. At least he had known Frankenberg for many years, had he not? A. Yes, because he had lived near him for many years.

"Q. Is your answer yes, then? A. That they knew each other, yes.

"Q. If I told you that your husband, in an affidavit in 1935, referred to Dr. Frankenberg as an old friend of his father, is that incorrect? A. Fritz probably made the same mistake. I would call him an acquaintance.

"Q. This affidavit was made in English. A. But he probably said friend and meant acquaintance. I would not say they were friends.

"Q. Now, in referring to the excerpt Exhibit A, 2537 you say that you did not believe Fritz was going to have a conference in Liechtenstein"—

Mr. Gallagher: It is a mistake; in Ruesselsheim.

Mr. Burling: "Question: Now, in referring to the excerpt Exhibit A, you say that you did not believe Fritz was going to have a conference in Ruesselsheim with Dr. Frankenberg, is that correct? A. You see, when I wrote it I put it in parentheses. It was a crack."

"Q. You mean sarcastic? You mean even though he told you he was going to see Dr. Frankenberg you did not believe it? A. Yes."

"Q. You stated that Wilhelm von Opel was in South America at that time. How do you know he was in South America at that very date? A. Because he left in April."

"Q. How do you remember that? A. I just remember it."

"Q. And he went to South America, you say, with Count Edelsheim? A. Yes. Count Edelsheim came from Budapest."

"Q. Was his name Gyilai? A. Yes. Something like goulash."

"Q. And you said that you believed that Fritz 2538 had given Count Edelsheim about 1,000 pounds for the father in connection with the trip to South America, is that correct? A. Yes."

"Q. Do you know whether other payments were made to the Edelsheims in Budapest? A. I think Fritz once invited the Count and his father to shoot a stag in Hungary and paid something for that."

"Q. Do you know whether Wilhelm von Opel frequently went to Budapest? A. I even met him there once."

"Q. When was the last time you were in Budapest, Mrs. von Opel? A. I do not know."

"Q. Was it in 1939? A. No. Before that.

"Q. Since you were married to Fritz, have you ever been in the home of Wilhelm and Marta von Opel in Weisbaden? A. Certainly.

"Q. How many times? A. I do not remember.

"Q. Was it often? A. Not too often.

2539 "Q. Isn't it a fact that Mrs. von Opel, referring to your mother-in-law, did not want you to come into that house? A. No. I didn't like to go there because she didn't like dogs. They keep the dogs in the cellar with the coal and I hate that.

"Q. Referring to Liechtenstein, you stated in reply to Mr. Gallagher's questions that you had friends there and referred to Prince Constantin. Who was Prince Constantin? A. He was a cousin of the ruler.

"Q. What is the ruler's name? A. Franz Josef.

"Q. Now, you stated that at the time your father-in-law gave Fritz the property he told him to see if he could keep it, which would be a great achievement. Were you present when that was stated, or did Fritz tell you his father said that? A. Fritz told me.

"Q. In other words, you did not hear Wilhelm von Opel say that? A. No.

"Q. Were you in Liechtenstein or Wiesbaden?"

Mr. Baum: "or Ruesselsheim," it should be.

Mr. Burling: It must be an error again.

2540 Mr. Gallagher: Ruesselsheim.

Mr. Burling: "Question: Were you in Ruesselsheim or Wiesbaden in 1931, or were you living in Belgium at that time? A. We were living in Braschaet at that time.

"Mr. Baum. I believe that is all."

(Mr. Gallagher then read the questions on re-cross examination, and Mr. Boland read the answers.)

"Re-cross Examination by Mr. Gallagher

"Q. Have you any recollection, Mrs. von Opel, as to how long Wilhelm von Opel was in South America? Was it a period of weeks, months, or what? A. Several months.

"Q. Let me ask you this. Do you know of any transatlantic telephone calls that Fritz von Opel ever made from America? A. No, I do not know of any. Fritz is rather stingy himself. He always writes postal cards but when it comes to telegrams and telephone calls he always writes a penny card."

Mr. Gallagher: If I might correct that, I think she said he was very generous.

Mr. Burling: No.

Mr. Gallagher: All right.

"Q. Then you know of no transatlantic calls? A. 2541 He never made any. He would not even call me if I were dying.

"Q. There has been some testimony in this case that Calvin Houghland stated that in February of 1941 he and his wife were at your house for dinner and at that time, in West Palm Beach, Fritz came back after an absence from the room and stated to Calvin that he had just been talking to Hungary for thirty minutes. A. Perhaps it was another 'geese with feathers' he was talking to.

"Q. Was there any such statement made by Fritz, or any such telephone calls? A. The telephone call certainly was not made.

"Q. Now there has also been some testimony in this case that J. Mason Houghland called Fritz von Opel on the transatlantic telephone to Switzerland in September of 1939. Did any transatlantic telephone call come into your home from Switzerland? A. None.

"Q. Do you have any knowledge of any such transatlantic telephone call from Houghland? A. I have not the slightest knowledge.

"Q Now, I am going to direct your attention to August of 1939. Mr. J. Mason Houghland testified that in the latter part of August 1939 Fritz von Opel telephoned 2542 him from some place in Cologne, Germany to England and asked him to come over to Germany to meet the father Wilhelm, that after all Wilhelm was really his boss, and Mr. Houghland stated that the next day he called Mr. von Opel back somewhere near Cologne, Germany. Do you know where Fritz von Opel was during the latter part of August, 1939? A. I positively know it.

"Q. Where was he? A. In Switzerland. He left Kampen in the first days of August.

"Q. Do you recollect why he left? A. Because we knew that there was a war coming. I had put Fritz on a train with 100 litres of gasoline that he personally carried with a friend in the train, because you just couldn't get any gasoline in Germany and he had to go with the friend to"—

Mr. Gallagher: I forget what that town was.

Mr. Baum: I do not remember, myself.

—"where he dropped her and then continued to go down to Zurich—at least 400 kilometers."

Mr. Gallagher: At that point I believe the record should reflect I asked a question, Where was the family estate, as far as the route was concerned that he took? and she said around 400 kilometers away.

2543 Mr. Burling: That is correct.

Mr. Gallagher: "Q. And your recollection is that Fritz left Kampen to go back to Switzerland—. A. I know it. For one reason I left Kampen around the 20th and I worked there at least ten days.

"Q. After Fritz had left? A. After Fritz had left.

"Q. So that Fritz would have left Kampen some time before the 15th of August? A. Definitely. I would say between the 12th and the 15th.

"Q. Then do I conclude correctly from your testimony that Fritz von Opel did not have a channel call to England and a return call the next day to Germany? A. It is impossible."

(Mr. Burling then read the questions on second re-cross examination, and Mr. Baum read the answers:)

"Second Re-cross Examination by Mr. Baum"

"Q. Is it not a fact, Mrs. von Opel, that Wilhelm von Opel made more than one trip to South America? A. He made a world cruise once.

"Q. How about trips just to South America? A. No. As far as I remember, not.

2544 "Q. In other words, you remember only one trip? A. Yes.

"Q. There is an estate near Cologne we have been talking about. It belonged to Fritz von Opel. What was it called? A. It is called Williamsruh.

"Q. And that is near Cologne, is it not? A. It is near Sost in Wesphalia.

"Q. Now, you stated that Fritz never made any transatlantic calls. If I told you that between December 1940 and May 1941 there were 105 long-distance calls made from your home in West Palm Beach, including at least 12 transatlantic calls, would you say that is incorrect? A. I would say it is incorrect. Long distance calls it is absolutely possible, because my friend Anna Marie Schwarzkopf was very ill at that time and I practically called her every day.

"Q. And you had no knowledge of whether or not any transatlantic calls to places like Switzerland, Hungary, Germany, England or Holland were made? A. I told you I absolutely believe it impossible. To Germany is out of the question anyway because all long distance calls to Germany were discontinued after about November 20, 1939.

2545 "Mr. Baum: That is all."

(Mr. Gallagher then read the remaining questions and Mr. Baum read the answers.)

"Mr. Gallagher: If I were to tell you, Mrs. von Opel, that Mr. and Mrs. von Opel made another trip to South America early, I believe, in 1935 or so, would you say that might be possible? A. It might be possible.

"Q. But you are certain that in 1937 he traveled with Count and Countess Edelsheim to South America? A. Yes, that is correct.

"Mr. Gallagher: That is all."

2546 Mr. Burling: If Your Honor please, I do not know who identified this document or anything about it.

Mr. Gallagher: I realize that is the matter. I am asking whether or not you will concede the fact that this is a back-up folder of the books which have heretofore been offered. Any entry in here can be confirmed in the books which are in evidence.

Mr. Burling: If Your Honor please, I can't concede a document I have absolutely no knowledge of. There is nothing in the record, as far as I can recall, about this.

Mr. Gallagher: Yes. I originally offered it pursuant to the stipulation. Then when I withdrew to put in the books, I offered what I thought were all of the so-called back-up folders. This is one of the back-up folders for one of the years that the books are in for.

The Court: Give him a chance during the noon recess to check on it. Call his attention to what identification you had.

Mr. Gallagher: All right. The importance of it, Your Honor, is that it contains therein an itemization showing a

charge to Fritz von Opel of a thousand pounds to be delivered to Count Edelsheim at the boat which was sailing on the 7th of April.

The Court: He wants to check on the identification.

Mr. Burling: If Your Honor please, I do not believe the document identifies itself.

The Court: That is what I say. You want to check on the identification to see what the record shows.

Mr. Gallagher: The entry is right in the books.

Mr. Burling: If Your Honor please, if there is a document here which tallies with this book, it still does not identify it.

The Court: I understand that. I understood Mr. Gallagher to say it was identified by some witness along with others, but he simply failed to offer it. I say, you can check that up during the noon recess.

Mr. Gallagher: I want to correct you. I do not want you to labor under any misapprehension. When I offered the books, after Mr. Burling's stipulation, this was one of the books that was being stipulated and had been offered at that time, identified, and put into the record. However, when Dr. Meier came here and we subsequently offered Plaintiff's 141 through Plaintiff's 154 and 174 to 176, included therein, in those numbers are the books which are in and the back-up folders for the years covered by those books, which were 1937 to the present date.

This is the one remaining back-up folder, which covers the year 1937, which we unfortunately forgot to offer at the time. It confirms the fact of the payment to 2548 Count Edelsheim. The same entry appears in the book which is in the record. I was merely offering it for the purpose of putting the whole charge in there.

If not, we will stand on the record in the book, but I would appreciate it if Mr. Burling would look it over and see what he thinks after the noon recess.

Your Honor, at this time—

Mr. Burling: Before you argue—

Mr. Gallagher: No; this is not an argument.

Mr. Burling: We have some exhibits which Your Honor said we should stipulate with counsel, if possible.

Mr. Gallagher: Before we get to that point, if I might, I would like to renew again, Your Honor, our objection to Defendant's 90, 97, and 98. I move to strike any testimony with respect to them from the record, as well as remove the documents themselves.

As you recollect, those are the three documents from the Giuliani files. One is dated in March of 1940; one is October, 1940; and one is a letter of February, 1942.

Now, as I have previously advised the Court, these documents were not admitted by us pursuant to any motion to admit. Number one.

There has been no concession that they were kept in the regular course of business. There has been no showing that in any wise the shop-book doctrine would be 2549 applicable. The only showing that has been made is somewhat of an authentication of the signatures being the signatures of the gentleman involved.

Now, purportedly, or apparently, these letters came from the files of Giuliani Brothers in Germany. They were apparently kept by Mr. Frick. Mr. Frick is alive and living, and has not been brought here.

We submit that anything kept in the Giuliani files, including an aid memoir, which is a reporting, in one of the plaintiff's exhibits, of what took place at the conference, prepared by whom we do not know, kept in Giuliani's files, is sheer hearsay and inadmissible.

As far as the letters showing any continuendo at that time which would tie in the plaintiff corporation, Uebersee, with a subsidiary, Transdanubia, we submit there is no predicate for that assumption.

True enough, one letter is written on the letterhead of Transdanubia; but Mr. von Opel, prior to that time, had advised him to lease the mines.

There has been no showing as to whether or not the man who writes the letter to Giulini in Germany, on a Transdanubia letterhead, is acting as the agent of Transdanubia in his capacity of Transdanubia being our subsidiary and operating as such or whether he is writing the letter as an agent for the lessee who has acquired the 2550 enemy properties of Transdanubia under a lease.

There has been no showing as to whose agent he is at that time.

We submit the record shows, much more convincingly, that he be the agent of the new lessee, pursuant to Mr. von Opel's orders of the previous May, 1931.

So, with that thought in mind, and with the additional thought in mind that they are from Giulini's files, with no showing that they were kept in the due course of business, no person here to identify them, the substance of them being hearsay, we again renew our objection and move to strike.

Mr. Burling: I agree that these documents do not come under the shop-book rule. They are not offered on that theory at all. I submit, however, that our friend's objection is premature as a matter of logic, because, of course, if we can't tie Uebersee in to Transdanubia, then what Transdanubia is doing is wholly irrelevant; but I submit that we will be able to show that. In the course of our argument I am prepared to argue that. But I think the time to say those letters should be put out is after Your Honor has considered whether we tie Uebersee in to Transdanubia.

If Your Honor finds that Uebersee was in fact managing or controlling Transdanubia in 1942, then the contracts and reports of Transdanubia's officers are admissions. 2551 If Transdanubia is a wholly owned subsidiary of Uebersee, the plaintiff here, and if Uebersee kept up a business relationship with it, then I say that a report written by the president or the manager of

Transdanubia is an admission that they were doing business.

We do not offer these exactly to prove the truth of the declaration, but these letters themselves are acts of doing business, particularly one in 1942.

The Court: That was the view I took of it, because I understood it was the act of an officer of this particular corporation. That was the basis of it. I mean, one of those spontaneous acts of an officer of a corporation, which, if it does have any connection with Uebersee—and that question I have left open until the argument is completed—might constitute the doing of business with an enemy.

The point is not that we are going to consider the point that he made as being correct, or take that into account, but the mere fact that, as an officer of the corporation, he is taking an act in furtherance of the program in Hungary. It is the act itself. I mean, the mere writing of the letter by a president of a corporation is an act. It is an act of the managing director, or whatever he was—I have
2552 forgotten his title now—but he was one of the managing officers. He is writing a letter in that capacity, and that might be doing business—in other words, may constitute the doing of business—subject to your argument.

I will leave it in and let you argue it more fully at the trial.

As you gentlemen know, in these equity cases the appellate courts do not hold us very strictly to what we admit. After I hear the whole case, it may be that I will hold that it does not amount to doing business, anyway.

Mr. Gallagher: All right, Your Honor. I will abide by your ruling.

The Court: You can argue, during the course of your argument, again, if you like, the question of the inadmissibility, and I will take the whole matter under advisement and I will give that some thought. Mr. Burling's argument

was the basis of my tentative admission of the documents. I understood they might consist of an act of the corporation itself which might be held to be the doing of business.

Mr. Gallagher: With just one thought that I would like to leave in your mind—that there was no showing that this man, when he wrote, was writing as an officer of the Uebersee or as an agent of some new lessee, which was 2553 our last knowledge of the fact.

The Court: I will hear you on that when you argue the case. I will leave it in for the time being and probably won't make a specific ruling on it, but I will bear that in mind in connection with the argument of the case.

Does that clear up your point?

Mr. Gallagher: Yes. We will re-raise it.

The Court: In other words, I am leaving it in evidence, subject to further argument, if you wish.

Mr. Gallagher: All right, Your Honor.

Mr. Burling: Now, I believe it is agreed, if I may read a stipulation, as to certain documents that we have offered: Defendant's 8, 10, 42, 43, 44, 47, 48, 50, 54, 68, 79, 84, 85—

Mr. Ingoldsby: If you will skip 84, 85, 86, 87, and 109, we will agree to your stipulation.

Mr. Burling: Then we also offer 108. Omitted 113 and 114, which will—

Mr. Ingoldsby: To keep the record straight right there, we will agree that we have no objection to the reception in evidence of any of the documents which were referred to by Mr. Burling, with the exception of documents numbered 84, 85, 86, 87, and 109.

(Defendant's Exhibits for identification 8, 10, 42, 43, 44, 47, 48, 50, 54, 68, 79, 108, 113, and 114 were received in evidence.)

2554 Mr. Burling: I offer these documents, and I might say to Your Honor, these are documents which all relate to the transaction which has the X mark

on it on the chart, the purported sale of the Uebersee shares to clients of the Swiss Bank in 1936.

I do not understand my friend's objection to the documents. I do not believe there is any question as to the authenticity, because they come from the files of the plaintiff corporation. I am unable to argue the point, because I do not know what the objection is, since the documents have been identified and are concededly documents from the plaintiff's own files.

Mr. Ingoldsby: Your Honor, our objection to the documents just referred to is all on the same basis, and it is all on the ground of relevancy, and I press this point with some vigor, because I think it becomes important, because I think the X'd out transaction, referring to the Swiss corporation on the chart, all refers to the transfer of the Uebersee shares to the Swiss Bank.

I believe that Your Honor will recall what the transaction was. Do you recall the details of it? Mr. Burling has stated it several times.

The Court: I believe I do, if we are talking about the same thing. Remind me of it again. Is this the 2555 Frima?

Mr. Ingoldsby: No, Your Honor.

The Court: This is not Frima?

Mr. Ingoldsby: No. Frima is the Liechtensteinean entity which held the shares of Uebersee.

The Court: Now, that had to do with this holding tax?

Mr. Ingoldsby: That did not, Your Honor.

The Court: I mean the Frima.

Mr. Ingoldsby: No, Your Honor.

The Court: Well, identify this one to me, the one you are talking about.

Mr. Ingoldsby: Frima, the administrative corporation, appears here (indicating). In 1936 this corporation, Frima, was holding the Uebersee shares. The corporation went through a transaction with this Swiss banking corporation, which is now X'd out. The transaction, in effect,

was to pass the technical legal ownership of the stock and, by virtue of a proxy arrangement which put the voting power back into Frima—

The Court: Isn't that what we are talking about?

Mr. Ingoldsby: Yes, that is what we are talking about.

The Court: That is what I understood, yes. That is what I understood when I said I thought it was the 2556 Frima transaction.

Mr. Ingoldsby: I beg your pardon. I thought you meant the transfer of the shares from Uebersee to Frima.

The Court: No; I meant from Frima to the Swiss corporation and out to a half dozen Swiss people who had an agreement that it would remain in escrow. Is that it?

Mr. Ingoldsby: That is it.

The Court: Yes; I remember that.

Mr. Ingoldsby: May I state my objection to them?

The Court: Yes.

Mr. Ingoldsby: My objection to the admissibility of those documents, which relate to that transaction, is simply this: that the inference which I am quite sure will be sought to be drawn from that transaction is that this was a fraudulent or sham and fictitious arrangement in connection with the handling of the stock of the Uebersee Corporation.

Now, first of all—I do not mean to argue the point; this is stating the objection—we contend, of course, that it is not a fact, and that the Treasury Department never seriously contended that it was. There has never been any fraud penalty assessed in connection with this.

We submit, further, that the going into the transfer of the Uebersee stock from Frima to the Swiss banking corporation is completely collateral to this proceeding. 2557 Collateral in the sense that I am quite sure that we would not have been permitted to have called as a witness in rebuttal, say, for example, Isadore

Kresel, who was an attorney in connection with it, or Mr. Marin, who handled the matter directly, officials of the Swiss banking corporation or of the United States Treasury Department, to show what took place.

Now, undeniably, there was involved in the transaction some connection with the personal holding company tax. We submit that that is completely collateral to the main issues in this case.

It is not that we deny any of the genuineness of any of the documents which are offered; but we say that, granting that they are genuine, what do they have to do with the particular issues in this case: namely, Did Wilhelm von Opel pass valid legal title to the gift to Fritz von Opel? Does it have anything to do with the citizenship of Fritz von Opel? Does it have anything to do with the usufruct or with anything else which might be material to this case?

Now, in view of the argument that we anticipate will be made on these documents, we strenuously object to their admission.

Mr. Burling: May I say, Your Honor, before I come directly to Mr. Ingoldsby's main point, that there is a further point to these documents. They are offered to tie Frankenberg in as the manager—the de facto manager—of Uebersee. For example, plaintiff's '84 is a cable from New York which Frankenberg sent to the Adler Bank, relating to this. '85 is a cable which the Adler Bank sent to Frankenberg. '86 is entitled, "Memorandum for Dr. Frankenberg." I am not sure that I am not skipping. I am trying to pick these up hurriedly. '84 is a cable signed "Frankenberg."

A second argument which I make, which also precedes my reply to Mr. Ingoldsby, is that one of these documents relates to what we charge is the use of this device by Uebersee, by the plaintiff corporation here, to defraud the British Enemy Property Custodian. I think it is admissible to show that the plaintiff so managed its

affairs, so hid its true ownership, that it defrauded and concealed from the British Enemy Property Custodian the true ownership and recovered back its plantation in Tanganyika; notwithstanding the fact that it is conceded here, or, at least it is asserted here, that the beneficial owner of Uebersee is Fritz von Opel, and notwithstanding the fact that it is conceded that at the time they tried to and succeeded in getting the plantation back, Fritz von Opel was a German and hence not entitled to recover back the plantation.

2559 I say that there is this entire picture, starting with whatever happened either in October or November, 1931, right down to date, to show the whole pattern or plan of concealing the true ownership so as to defraud whatever government might be involved—Germany, Britain, the United States—and that Your Honor can take the entire thing as a single pattern of deception, of concealment.

I would like to refer to what Frankenberg said when he said that we did not understand in this country, but in Switzerland it was customary to hide capital. Capital came from all over the world to be hidden there. I think it is the totality of plan, and Your Honor can see that ultimately the capital here was in 1942—

The Court: Did the plaintiff offer any testimony about this at all?

Mr. Ingoldsby: About the transfer to the Swiss banking corporation?

The Court: Yes.

Mr. Ingoldsby: I do not believe so. Did we?

Mr. Baum: Fritz.

Mr. Ingoldsby: If we did, it was only in the tracing of Uebersee—frankly, I do not recall any.

Mr. Gallagher: My best recollection is that in tracing

this chronology, even though we are in effect 2560. presenting an anticipatory case, we did discuss the fact that in 1936 they were sold and in 1941 they were repurchased.

The Court: Of course, if you opened it up, I suppose the actual picture could be completed.

Mr. Burling: May we have until the luncheon recess to look at the record?

Mr. Gallagher: I join in that request that we have until then.

The Court: That will be all right.

I would like you also to consider the argument about Dr. Frankenberg's connection with it.

This actually has to do with some securities that were in question here, does it not?

Mr. Ingoldsby: No, Your Honor.

Mr. Burling: It has to do with the shares of the plaintiff.

The Court: That is what I mean.

Mr. Ingoldsby: Yes.

Mr. Burling: We have not vested the plaintiff; we have vested the plaintiff's assets; but the shares are the subject of that transaction.

The Court: That is what I mean.

Mr. Ingoldsby: That is correct.

I do not know whether Your Honor wants to 2561 hear me further at this time or wait until we check the record, but I have something more to say about it before you rule.

The Court: Go ahead.

Mr. Ingoldsby: I did not understand Your Honor.

The Court: Go ahead.

Mr. Ingoldsby: So far as these particular exhibits relate to Frankenberg being connected with Uebersee, we have never denied that and we have admitted all

along that Frankenberg occupied the technical position of managing director. All you have to do is look through our books and records and you can see that compensation was paid.

The Court: His activity of supervision over transactions might have some bearing on whether he was representing the father or the son. It might depend on the individual circumstance of each case.

Mr. Ingoldsby: I will pass that one.

The Court: I do not know just exactly what this shows.

Mr. Ingoldsby: I do not know what it shows, either, Your Honor—

The Court: I had the impression that Mr. Gallagher started to introduce some testimony about it. Then, after he got into it to some extent, he decided to
562 abandon it, and that is the reason he put that mark on there.

Mr. Gallagher: No, Your Honor. That was up there when we brought the chart in here.

The Court: Was it?

Mr. Gallagher: Yes. We had it on there.

The Court: You can check the record on it during the lunch hour.

We have had in this case a great many collateral transactions that were not objected to which, as I understand it, were offered by the Government to show that the plaintiff at least went through certain transactions with the idea of concealing some identities. I think Mr. von Opel admitted to one of them, as I remember it, about this attachment of his father's account; that he had in mind allaying some hostile action of the German Government; and this question about the passport. A great many of these matters might be collateral, but they were not objected to at the time they were offered; and I am very much inclined to let you argue the case

with them in and give you all the latitude you want in arguing that they are not persuasive or not relevant.

So much of this testimony went in without objection that it is a little difficult, right at this stage, to winnow—
 out all the points in absence of a very full argument;
 2563 so I am inclined to let all this testimony stand,
 and I will admit these particular documents over your objection, and let you argue their weight or lack of probity. I do not want to make formal rulings on evidence at this time; I would much rather hear you.

That will save the record. I will admit these over your objection and hear you on that as part of your argument.

Mr. Gallagher: Could we have about a five-minute recess before argument?

The Court: Yes.

Mr. Burling: Before that, I do not believe the record showed the numbers. Defendant's 84 through 87, plus 109, which are the subject of Your Honor's ruling.

The Court: All right.

(Defendant's Exhibits for identification 84 through 87 and Defendant's Exhibit for identification 109 were admitted in evidence).

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APPENDIX

(The following is a stipulation between counsel for the plaintiff and counsel for the defendant with reference to the deposition of Mrs. Fritz von Opel):

Plaintiff and defendant agree that the deponent need not sign the transcript; and in addition, that after the transcript has been prepared by the reporter, it may be sent to counsel for defendant directly by special delivery

and need not be filed by the reporter with the Clerk of the Court. However, plaintiff will receive a copy of the transcript.

Let the record note that the taking of this deposition commenced at 10:40 a.m. and recessed at 1:40 p.m. The letters which the defendant had requested from Germany did not arrive until 2 o'clock. Subsequently, the taking of the deposition began at 3:30 p.m.

It is stipulated by the parties that Mrs. von Opel wrote a letter on April 28, 1937 to Mrs. Ruth Lengnick from which Defendant's Exhibit A is an excerpt, and that the letter may be identified as Exhibit E.

It is further stipulated by the parties that on November 18, 1939, Mrs. von Opel wrote a letter to Mrs. Lengnick from which Exhibit C is an excerpt, and the letter is to be identified as Exhibit F.

It is further stipulated that on December 24, 1940, 2650 Mrs. von Opel wrote a letter to Ruth Lengnick, an excerpt from which has been heretofore marked Exhibit B, and this letter is now hereby identified as Exhibit G.

It is further stipulated that Mrs. von Opel wrote a letter on November 20, 1939, to Mrs. Lengnick, in which she said, "The little master is in Hungary about some bauxite business. He is interested in some Hungarian geese—this time real ones with feathers." And it is stipulated that this letter can be identified as Exhibit H and the excerpt therefrom as Exhibit I.

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2911 Mr. Gallagher: Mr. Boland points out to me, and I think that I should recall to your attention, that this Defendant's 90 was admitted by Your Honor temporarily, because of the signature identification, and not as to what the contents of the letter itself were, because there has been no showing that the writer thereof was

working as a director or as an agent of Transdanubia or Uebersee.

Mr. Burling: Ordinarily, I would resent the interruption, particularly in view of the fact that there have been five or six motions to strike and other controversies 2912 concerning this document, but this time I do not.

I am glad Mr. Gallagher did interrupt me. I can make my argument a little more full.

May I have the document, please?

Mr. Boland: Your Honor, I do not like to get up on this point, but I have refreshed my memory very recently on the discussion with Your Honor on this exhibit, and it was very clearly stated by the Court that the reason for the admission of this particular document was on the basis of the fact that a letter was written, and Your Honor stated that whether or not that act of writing a letter constituted business would be left open for oral argument.

There was no question of admitting this document for the purpose of what was stated in the document itself. We had argued that it was hearsay. You said, "I understood, Mr. Burling, that you are offering this merely for the purpose of showing that an agent of Transdanubia wrote a letter, and whether or not the writing of a letter constituted business if a question for argument."

Mr. Burling: If Your Honor please, I will argue it once more. The testimony is that this document was written on the letterhead of Transdanubia, that Fritz von Opel positively identified the signature of Timar, that von Opel said that when he was last in Budapest Timar was one of the managers. The letter, in other words, is a letter 2913 which we know Timar signed for Transdanubia to Giulini Brothers.

There has been a rather involved argument about what the letter is admissible to prove, but I submit that once you have the document, signed by a manager of a wholly-

owned subsidiary corporation of the plaintiff, it is then admissible as an admission of the plaintiff as to what the facts are. The earlier debate related to other documents, largely, or to questions as to whether Transdanubia was doing business.

The Court: I do recall that the point that I thought you argued at the time you offered it was that the letter itself showed by its contents that it was a communication with some party in the pursuance of some business.

Mr. Burling: That is correct, Your Honor.

The Court: And therefore that the letter itself was an act. It was one of those contemporaneous acts which described the transaction. The recital of that act or a recital of some event which took place would not be admissible as to that particular act, because if the letter itself promoted or was in pursuance of the act, a discussion or recital on that act would not be evidence of the act itself.

Mr. Burling: Even though it was signed by a manager of the wholly-owned subsidiary?

2914 The Court: That was my impression of it. I told you I would let you argue it on any phase. That was the basis on which I admitted it. I told you you could argue it.

The point I had in mind was that sometimes a man, in writing a letter, even though it is a business letter by an officer of a corporation, might be making a totally inaccurate and misleading statement of the event, and it might be hearsay and it might not.

Mr. Boland: Your Honor, in addition to that—I have difficulty in finding the transcript—I am sure that you directed a statement to Mr. Burling along this line: "Mr. Burling, I understood that you are offering this to establish the fact that an act of writing this letter had been actually done by the corporation for that purpose alone." Mr. Burling said, "That is precisely the basis upon which we were offering it."

The Court: I was ruling on the admissibility of it. I did leave it open for both of you to argue whether it is hearsay or not. The point I was ruling on right then was as to its admissibility. It looked to me to be fairly admissible if you have an authentic document of a corporation which, in and of itself, by its officer and at a date which is fixed, is an act contemporaneous with a declaration or is a description of it. It is not exactly *res gestae*, but it is along that line. It is a spontaneous declaration; that is what it is. That is a clear exception to the hearsay rule.

Whether there are also admissible statements in the letter which recite an event which occurred in the past, I have some doubt about that. I am not sufficient familiar with that letter right now as to whether it has any such recital.

Mr. Burling: I agree in part with what Mr. Boland said. I did agree that one of the grounds of admissibility was that the mere writing of the letter to Giulini was the act of doing business.

The Court: Yes. I remember your argument.

Mr. Burling: I did not mean to limit myself.

I would now like to hand to Your Honor a document in translation and to argue that it is a recital, in very nearly technical bookkeeping terms, of the shipment of bauxite and of correction of shipping records, and that that being so, the statement of Timar, the manager of Transdanubia, which in turn was 100 per cent wholly owned by Uebersee, is an admission that bauxite was being shipped as recited in this document.

Mr. Gallagher: Your Honor, with respect to that, as you noted, it points out certain transactions taking place in 1941. As you also know, the record is undictated in this respect—

The Court: I do not see that.

Mr. Gallagher: Yes. It reflects the shipments, as I recollect, in October, November, and December, of 1941. Is that not correct?

Mr. Burling: I think it would be much more orderly if each side could argue.

The Court: That is a little bit different. This is an absolute discussion of a business transaction between parties. That is, a discussion between the parties of a transaction. That would come within the rule I am talking about. The only one I would have any doubt about would be the last paragraph.

Mr. Burling: I am perfectly willing to exclude the last paragraph from the exhibit.

The Court: That is the only thing. That is a recital of past events. I have no doubt about the others.

I will hear you on rebuttal. I can tell you very plainly what I have in mind. When you have a letter of a business organization, in the regular course of business, written by one of its officers to another party, which interprets a transaction, or an alleged one, that tells the quantities in it, and things of that sort, and discusses how to treat it or how you will have the bookkeeping entries or how you will operate on it, I think that is a contemporaneous act. It is a statement in and of itself which is a part of the ordinary business.

Now, there may be a distinction—I am not entirely convinced on this, but I had it in mind—when the writer begins to say, for instance, in this last paragraph, "We have vigorously urged, however." Now, what is vigorous and what is repeated, and all that business, comes in a different category. He is reciting something he did in the past. That is entirely different from the carrying on of the business as it is here in the upper part, where he said if we deduct this, the difference is so and so, and if the weight is added, the weight to be settled properly amounts to so and so. That is pretty close to doing business.

Mr. Gallagher: I would like to just remind Your Honor of one factor. This is not a document which has been shown to be kept in the regular course of business.

The Court: I think the inference is that it was. Here is the letter from a party—

Mr. Gallagher: It is from Germany.

The Court: It is a party who is an officer of Transdanubia.

Mr. Gallagher: We do not know that, Your Honor. We do not know if he is, after May of 1941, an officer 2918 any longer.

The Court: You are straining a little bit on that. Under the circumstances, you have a letter from an organization that you would normally deal with and had dealt with. You have the name of a party who, according to your own witness, was an officer of the outfit at the time, and he purports to be one right now of a company which the plaintiff controls. I think the circumstantial evidence is that it is in the regular course of business. You can prove it another way.

I have admitted the letter. I will leave out that last paragraph. I think the other is clearly within my ruling.

(Defendant's Exhibit 90 for identification was received in evidence.)

Mr. Burling: Your Honor, I might say, if Your Honor please, all that I now want to get out of the letter is the fact that there were these shipments of bauxite. The business which is referred to, and which this letter is a part of, I say goes to show that the mines were not leased. Transdanubia did not (A) lease the mines and then (B) produce bauxite out of them. If Transdanubia had followed von Opel's suggestion and leased the mines, then it would not have any mines to produce bauxite out of; and

I might say there is nothing in the record to indicate that the mines were leased other than Opel's suggestion that they be leased. There is nothing in the record, other than repeated statements or hints by counsel, that they were leased. The record is bare on this point except that long after the suggestion of Opel that they be leased, Transdanubia was writing, referring to shipments in considerable quantities which it had made, not its lessee.

As to Transdanubia itself, the record shows that it had a contract running into 1942 which von Opel negotiated, which was that it was to produce these 100,000 tons of bauxite. We have the letter which Your Honor has just ruled on, which shows that quantities were shipped in October, November, and December, 1941. We have the letter relating to these shipments in February, 1942, after the war started, dealing with clearance of accounts with Giulini relating to the shipments, the writing of which letter itself was an act of doing business. Then there is also the fact that the loan of 32,000 francs was repaid in November, 1942. So no argument could be made that Transdanubia was not doing business within Hungary during the war and was not an enemy.

Now, the remaining question is what relationship existed between Transdanubia—

The Court: Excuse me just a minute. Mr. Gallagher, for the record, I think probably, because of Mr. 2920 Burling's argument, I ought to make clear that I am not going to foreclose you from arguing contrary to his argument, that that letter is not admissible as showing transactions in October, November, and December, 1941. I will let you argue on that point. I am not ruling one way or the other on that proposition, Mr. Burling.

The thing I am ruling on—and I want the record to be clear on it—is that in so much as this letter apparently, to me, was written by an officer of Transdanubia and was

produced from the files of an organization with which Transdanubia did business, and the officer who wrote it was described as one who had been, at least, an officer, and now, apparently purports to be, as of the time of the writing of the letter, that fairly establishes the letter as having been written in the usual course of business; and that in so much as all of the paragraphs except the last paragraph of the letter constitute in and of themselves a discussion of some deduction and addition, that in and of itself is a deal, an act which tends to indicate one.

Now, whether it properly may be received to indicate that it was business in October, November, and December, 1941, I will let you argue that in reply. I will leave that in abeyance. But my definite ruling is that it is in evidence for the purposes that I have described with regard to all paragraphs except the last—I want to 2921 get the record straight on it—for what it is worth.

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Now, going back a moment, I have said that the question is what the relationship between Transdanubia and Uebersee after the outbreak of war between the United States and Hungary or Germany. And here, except 2922 for the extension of credit which I have already spoken of, we find ourselves in a void, or, to change the metaphor, Transdanubia disappears into a haze and we just don't see it any more. There is no testimony in this record of an act of dissociation. There is no testimony in this record that Uebersee did anything to cut itself off from Transdanubia. There is no evidence that a corporate decision was made to have no further dealings with it. It just disappears.

Fritz von Opel and Frankenberg are in the United States after 1940 and they do not know anything about it at all. The Uebersee books are sent for, but no file on Transdanubia is shown at all, and the plaintiff did not see

fit to bring its books governing the years 1941, 1942, 1943—

Mr. Gallagher: I have to object. They are in as exhibits 141 to 154 and 174 to 176, down to the present date when they were sent here.

Mr. Burling: At any rate, there is no file indicating what happened to Transdanubia.

Meier, the president of the corporation, comes over here and he testifies that he hasn't kept the books for a long time; and Your Honor will recall my strenuous efforts to find out when he last saw the books, and he saw the books at some time after he first got them, but then he could not say when he first got them, and he could tell when he got

them because he knew when he last had them, and

2923 he had them before he got them. That is the best

we could get from him. He could not say when he last saw the books, although he thought he saw them at the time they were packed up to be sent here. But he does not know about the bookkeeping entries or the files relating to Transdanubia during the war.

Now, it seems entirely probable that somebody must have voted the Transdanubia shares at stockholders' meetings, but no witness who was called could tell us who voted the shares or even who decided not to vote the shares. Apparently, the plaintiff would have the Court believe that suddenly all its officers collectively suffered from amnesia and just forgot that they had a wholly-owned subsidiary corporation in Budapest with an investment of more than 100,000 Swiss francs in it. As a matter of fact, the only amnesia they do not seem to have with respect to Transdanubia is the carrying of the investment on the books until it was written off in 1946, but otherwise they seem to forget entirely their obligation to manage the property.

Your Honor will recall that Dr. Meier testified he felt obliged, since Frankenberg and Mr. von Opel were here, and von Opel was in the internment camp, to look after the investments; and then Your Honor will recall my to-

tal inability—my total failure—to find out what it
 2924 was that Meier did, what act he took, what decision
 he made, in supervising the Transdanubia invest-
 ment. He finally admitted, under my persistent cross ex-
 amination, that Uebersee supervised Transdanubia; but
 what that supervision consisted of we never found out
 at all.

Now, yesterday morning I accused Mr. Gallagher of
 using an old lawyer's trick of the missing witness. Your
 Honor will recall that he wanted to know why we didn't
 call von Klemm, and the vice president of Spur, and he
 read off a list of directors of Harvard Brewery, and why
 didn't we call Hoffacker, and Ulrich, and even Isadore
 Kresel, instead of calling the witnesses that we did call
 who testified to such effect. And I say that that is a trick
 that you see in a lot of lawsuits. Whoever the lawyer
 calls, his opponent says, "Why don't you call somebody
 else?" and I do not desire to open myself to the same
 charge, but I do think I am entitled to ask what Hengge-
 ler, and later Gaeng, did with respect to Transdanubia.

Your Honor will recall that there were three directors
 of Uebersee, one of whom was Frankenberg, who was
 therefore inactive during the war because he was in
 America. Then there was Meier, who testified here that
 he did not know anything about it at all. Then there was
 Henggeler, who was succeeded in 1942 or 1943 by Gaeng.

Since Frankenberg and Meier knew nothing about
 2925 what happened to Transdanubia, it must be that

Henggeler and Gaeng are the men who know where
 it went; and when my friends have the burden of showing
 that Uebersee did nothing whatever with respect to the
 management and supervision of Transdanubia during the
 war, I submit that it is not enough for them to call two of
 the fore possible men and have them say they know noth-
 ing about it. This, it seems to me, is a problem of negative
 proof, and to negate the presumption that somebody in

Uebersee managed Transdanubia, they should call all the officers or else suffer the inference that the officer they do not call is the man who did it.

I want to say again, on the face of this record, Transdanubia is not cast off by Uebersee. No corporate decision is reached by an officer to do nothing about it during the war, just to let it sit. No act of dissociation takes place. It just vanishes from the mind of men. It is a will-o'-the-wisp. Now we see it, now we don't.

Let us suppose arguendo that at some time the officials of the plaintiff corporation did decide to give up or write off or dissociate themselves and Uebersee from Transdanubia. That would be an affirmative act which somebody would have to take. Somebody would have to reach a decision. But there is nothing in this record that shows that anybody ever reached that decision. Von Opel states that he decided not to invest any more money and that 2926 he suggested that the mines be leased. But it is clear that after that he was still interested in the property, because he was interested in the royalty that would be paid if the mine was leased.

Surely, when Transdanubia was able to pay back the 32,000 franc loan in the fall of 1942, that told Henggeler, who had been handling the extension of the guaranteed loan, that the company was doing better. They must have known that it was making money. Is it reasonable to suppose that Henggeler and Gaeng never thereafter even inquired as to what Transdanubia's profits were in 1942, 1943, 1944, and 1945? Weren't they curious to know how the bauxite production was coming on? Didn't they want to know whether Giuliani had renewed the contract at the end of 1942? Didn't they want to know if they could expect dividends? What did happen to Transdanubia? Where is the file of papers which the Transdanubia officials must have sent Uebersee? I say that the plaintiff has totally failed to bear the burden of proof that Uebersee cut itself off from Transdanubia.

I am well aware that the doctrine of *res ipsa loquitur* does not directly apply here, but it suggests an analogy that I would like to suggest to the Court. Supposing—and I hope this does not happen—Mr. Gallagher were walking by my house and the window were open and a brick sailed out the window and struck Mr. Gallagher on the head, and Mr. Gallagher were then to bring suit against me, and I would take the stand, like Meier here, and I testified, "Gee whiz, I don't know how that brick came to fly out the window. I know nothing about it," and then the defense rests. I feel quite sure that Your Honor would direct a verdict for Mr. Gallagher.

Put another way, I do not think it is enough for the plaintiff, once it is shown that it was actively managing Transdanubia and that Fritz von Opel had negotiated a contract for it to ship the 100,000 tons of bauxite, and once it is shown that plaintiff was assisting in the financing of the corporation and that Transdanubia was successful producing bauxite, to say, "Gee whiz, we don't know what became of Transdanubia." They have got to explain what became of it.

I think, in order for the plaintiffs to be successful in this line, it would be necessary for them to prove a decision to abandon and a severance of ties with Transdanubia, or else and at least, to call all the officer witnesses who could have acted, and to have them say that none of them took any action with respect to Transdanubia.

Now, plaintiffs will argue that this is a question of negative proof, and that that is a hard kind of proof to establish; and I admit that, but, nevertheless, that is the burden that they have as a matter of law. They do not meet that burden of negative proof by calling one of three directors of Uebersee who resided in Switzerland during the war and have him testify that he personally never did anything. I say that the burden is not met until everyone who could have acted on behalf of

Uebersee in relation to Transdanubia has testified that he did not so act.

In this connection, it is interesting to note that there is a stipulation between the parties as to what Henggeler and Gaeng would testify to if they were called as witnesses by the plaintiff. In the stipulated testimony, however, there is not one word about what they did or did not do with respect to Transdanubia. It is also noteworthy that the record shows that the one official who, during the war years, did in fact do something with respect to Transdanubia, namely, directed Adler, who extended the guarantee, was not called, whereas the one officer who was called—other than Frankenberg who admittedly was out of the picture—Meier, said he had not had anything to do with this and apparently had not had anything to do with the guarantee.

In conclusion, I say that it is obvious that unless the plaintiffs satisfy Your Honor that they did not do business with Transdanubia, that they cut themselves off from Transdanubia at the outbreak of war with Hungary, 1914 then they were doing business, through their wholly-owned subsidiary in Hungary, namely, the mining of bauxite—that is, business within an enemy territory—and if they do not so satisfy Your Honor, they fail, because the plaintiff corporation is an enemy.

The Court: Your position on the Supreme Court case cited by Mr. Connor is that that only dealt with evidence of the total ownership of the shares?

Mr. Burling: Yes, Your Honor; that is, bare ownership.

The Court: And that there was no affirmative act?

Mr. Burling: Candidly, Your Honor, I am not familiar with the case. I suppose I should have been. I have been in this—

The Court: Well, he did argue the Supreme Court case. I took a note of it myself, and I understood his argument was that the Supreme Court had held that where the evidence was solely that one corporation held all the cap-

ital stock of another, that was not sufficient to make out responsibility on the part of that corporation for the acts of the subsidiary. Was that the effect of it?

Mr. Connor: It was a service of process case, Your Honor.

The Court: I understood that it was on the service of process, as to whether they were doing business in 1930—a certain community. I know your answer to it.

Mr. Burling: My answer is that I conceded that point and therefore did not look up Mr. Connor's case. I agree with him.

The Court: That is what I say. You say we have some act beyond that?

Mr. Burling: I say two things. One is we have some acts which affirmatively we proved and, secondly, we have a great many acts before the war which raise a presumption of continued ownership which is not overcome.

The Court: Yes. All right.

Mr. Gallagher: I know it has been a pretty hard day, but if we could have perhaps a five-minute recess, I think Mr. Connor might be able to finish this entire portion in 30 or 40 minutes, and then he would be free.

The Court: I do not mind sitting until 5 o'clock, but I do not believe I can run much beyond that.

Mr. Connor: If Thursday would be at all possible to Your Honor—

The Court: I think the new matter that Mr. Burling has brought out, if you can answer it, deals with only two propositions. I mean new matter. You have already argued at length the economic proposition and the other and this control. The two things that he has brought out that I have noted particularly were, first, he says that the definition of the act itself indicates that the putting up of security or the extension of security—I do not know whether it was extension or not; it was the putting up of security—would constitute doing of business.

That is point number one, in effect, that he brought out that was new. The second point was that in the ordinary course of business it would be anticipated that Transdanubia would continue with its business, and that Uebersee would continue as it had before in supervising it and carrying it on, and that the burden is on you to show the contrary.

Those are the two big points that he has brought out, other than refuting what you have argued. If you can cover those in a half hour, I will be glad to hear you.

Mr. Connor: I had also in mind most particularly replying to Mr. Baum.

The Court: I had understood Mr. Boland was carrying that.

Mr. Boland: No, Your Honor. If you recall, I covered it very briefly and made reference to the fact that Mr. Connor was going to cover that.

The Court: How much time do you want except for Mr. Connor?

Mr. Gallagher: I would say, with the exception of Mr. Connor, perhaps a maximum of two hours, possibly an hour and a half, for Mr. Boland and me, Your Honor.

2932 The Court: You mean the whole matter can be concluded in two and a half hours?

Mr. Gallagher: Rebuttal for the plaintiff in about two hours.

The Court: Why do we slice it up? Why don't we hear it all Thursday morning?

Mr. Gallagher: That will be fine.

The Court: I would like to get through, if we possibly can, by the noon recess Thursday, because I have got to go into some important cases not later than Tuesday of next week, and I want to do much work before then.

We will go over until Thursday morning. I have to receive a verdict, but that won't take long, about ten minutes. Let us try to see if you can get through by 12:30.

(At 4:30 p.m. an adjournment was taken until Thursday, January 27, 1949, at 10 a.m.)

2935

PROCEEDINGS

The Court: All right, gentlemen, I think we are ready to proceed in the Uebersee argument.

DISCUSSION REGARDING DEPOSITION OF MARGOT VON OPEL

Mr. Burling: If Your Honor please, Your Honor will recall that there was some rush in the deposition of Margot von Opel, and we read a transcript which was prepared by Mr. Gallagher's secretary rather than wait for the official report.

The Court: Yes.

Mr. Burling: The official report is now here, and there are four lines that I find were not correctly read before. I would like to read them into the record.

The Court: I think that is all right.

Mr. Burling: Page 4. The original question is in the record, but the answer, then the next question, and the next answer are either omitted or garbled:

"Question: How did you know that Mr. von Opel was going to have a conference with Dr. Frankenberg in Ruesselsheim?"

"Answer: Because he told me on the phone, perhaps, that he had planned to do so. I don't know.

"Question: Mr. von Opel had told you; is that
2936 correct?"

"Answer: Obviously; I would not have made it up."

The Court: All right.

The Deputy Clerk: Uebersee Finanz-Korporation
v. Clark.

The Court: All right.

Mr. Gallagher: If Your Honor please, I do not know exactly what procedure you want us to follow today, but in the light of suggested changes that the plaintiff has made to the Court's tentative findings, Mr. Boland and I have broken them down along the lines and in the way in which we handled the plaintiff's case in chief. If you agree, Your Honor, we should like to break down the findings individually as we go along.

The Court: I am wondering if it would not be helpful to me for you to express each one and then let Mr. Burling answer it as we go along.

Mr. Gallagher: That sounds very good.

Mr. Burling: I would prefer to answer each one as it is taken up.

The Court: Yes. Let us do that, then.

Mr. Gallagher: Mr. Boland will handle the suggested change of finding No. 4.

Mr. Boland: Your Honor, do you have a copy of our proposed changes before you?

The Court: Yes, I do.

Mr. Burling, in case there isn't any objection to any of them, will you let me know before the plaintiff's
3056 counsel starts to argue?

Mr. Burling: I am afraid, Your Honor, that there is objection to every one of them.

The Court: All right.

Mr. Boland: The first finding, Your Honor, is finding No. 4, and the main reason for the change in our proposed amended findings is in respect of Mrs. Elinor Sachs, the sister of Fritz. The record shows merely one thing in respect of Mrs. Sachs, and that is that she is resided in

Switzerland. The record is barren of any evidence to show that she was resided or domiciled in Germany.

At the time of presenting our case, we were not aware of the fact that Mrs. Sachs was an element or an issue in this case. Had we been so aware, we would have put on evidence to show that she has been domiciled in Switzerland for the last 17 years. This is extremely important to us because Your Honor will recall that our legal position is that under the Trading-With-the-Enemy Act, specifically under Section 2 of that Act, a non-resident German citizen is not an enemy within the definition of section 2, unless by Presidential proclamation such persons are so declared. You will recall that during this war no such proclamation was made by the President.

Therefore, from the standpoint of an appeal, it becomes very important to us, having taken the position that
3057 a non-resident German citizen is not an enemy, to have either a finding that Mrs. Sachs has been domiciled in Switzerland, on the basis of what is in the record, or that reference to her as an enemy be limited merely to the fact that she is an enemy on the basis of citizenship regardless of domicile. That may seem quite confusing, but that is the point we have in mind.

Specifically, the main reason for our objection is that there is no evidence to the effect that she has been resided in Germany. The only evidence in the record shows that she is resided in Switzerland. The reference to that is pages 51 and 52 of the record.

Mr. Burling: If Your Honor please, the record is silent as to the sister's present domicile. The record does establish, of course, that she acquired domicile by birth in Germany. Whether she lost that domicile is a matter of German law or Swiss law. The record does not state. It leaves her domicile in Germany. So from the record the conclusion that she is domiciled in Germany is proper.

I do not mean to be coy with the Court. We did interview her in Switzerland. We know that at some point she has been in Switzerland. If we are going to go outside the record, we understand the facts to be that she ran away from her husband and that at least part of the time she has been living in Switzerland.

3058 The Court: I cannot go outside the record. You say Mrs. Elinor Sachs, nee von Opel, the sister of Fritz von Opel, was born in Germany. What does the record show on that? Does the record show that she was born in Germany and lived there or was domiciled there until her marriage?

Mr. Boland: No; the only thing the record says about the daughter is in connection with the questioning of the father—the deposition of the father—on page 51.

“Question: Do you have any other children?”

“Answer: I have one daughter living in Switzerland.”

But for that, there is no other reference made to Mrs. Sachs.

Mr. Burling: I think that is correct; but when I said the record establishes that she was domiciled in Germany, I meant to say the record establishes that the parents were at all times domiciled either in Wiesbaden or Ruesselsheim, Germany.

The Court: The only part that that would have to do with would be this reversionary interest; is that right?

Mr. Boland: Yes, Your Honor; that is the only place it comes out. In discussing enemy taint in your opinion, you spoke of the fact that she probably would be one who would inherit in the event of reversion subsequent to the death of the mother, and that she being an enemy, that enemy interest caused taint of the plaintiff corporation.

3059 The Court: Of course, I am held by the record.

Mr. Boland: As a matter of fact, Your Honor, I can say this truthfully, that we are not aware of whether or

not Mrs. Sachs is actually a German citizen at this time. The last time Fritz von Opel was in contact with his sister was in 1940.

The Court: If we both agree that the record shows that the only evidence is that she is a sister of Fritz von Opel and is a resident of Switzerland, that is all I can find. I am bound by that. Then, I will just change my finding in this way:

"Mrs. Elinor Sachs, nee von Opel, is the sister of Fritz von Opel and is a resident of Switzerland."

Mr. Boland: All right.

The Court: I don't know whether there would be any point in writing a supplementary opinion saying that. I don't know whether it has anything to do with it or not. It would not change the result. In my judgment, it would not. It would give you something to argue. I will look that over.

Mr. Gallagher: The next requested change, Your Honor, is with respect to tentative finding No. 6. I believe that the plaintiff's proposed amended finding states accurately and exactly what the record reflects. That is shown from particular reference to page 1435 of the record. To refresh your recollection, Mr. Burling asked, during the 3060 course of the trial, that Mr. von Opel break down the time during which he had made visits to the United States and had resided in Switzerland and had gone to Germany.

Mr. von Opel's compilation reflected that approximately 35 percent of the time was spent in the United States, 35 percent of the time in Switzerland, 9 percent in Germany, and the remaining time traveling elsewhere.

Even under Mr. Burling's own compilation, I believe, if I am correct, he would have had a figure of 11 percent as the amount of time Mr. von Opel spent in Germany during the years from the date of his departure.

The Court: Let me see if we can cut this short. There may be some significance to the word "permanently." Why not say:

"After December, 1929, Fritz von Opel never lived continuously in Germany but lived successively in the United States, Belgium, and Switzerland, where in 1934 he became a Swiss domiciliary. Between December, 1930, and August, 1939, he went to Germany for short visits."

Wouldn't that be right?

Mr. Gallagher: Well, Your Honor, with respect to the fact that you would change it to "He never continuously resided," while that is more accurate, we believe, than the present finding, nevertheless, he never had, as you recollect from the record, any residence whatsoever where 3061 he resided. He had no home or apartment at any time from 1930. He was out of the country from 1929 to 1930, in the United States. He never had an apartment or a home, and the only place he ever stayed was at, basically, Sylt, where he went to visit on a few occasions in the summer. Other than that, he made some visits to his father's home in Berlin. The man never maintained any home or apartment in Germany.

The Court: You might say he never maintained residence in Germany; but to say he never resided has a meaning which in law is treated in various ways. We have a residence here in the District of Columbia for one purpose and have a residence somewhere else for another. It just depends upon the purpose of it. That is a legal term. You might say he never maintained a place of abode in Germany, unless there is some evidence—

Mr. Burling: We contend there is.

Mr. Gallagher: We are not asking for a finding that he never resided in Germany. Our finding merely states that he left Germany permanently in 1929 and lived in the United States, Belgium, and Switzerland, where in 1934 he

became a Swiss domiciliary. Between December, 1930, and August, 1939, he occasionally went to Germany for short visits. That is what the record reflects.

The Court: I have that myself.

Mr. Burling: My principal objection is to the word "permanently." I agree except that such residence as residing in a house rented by his wife on the island of Sylt does not show any legal residence in Germany. But I object to the plaintiff's use of the word "permanently," because I think it is ambiguous. It suggests intent to leave his residence in 1929.

The Court: How about striking out—

Mr. Gallagher: "Left Germany and lived successively in the United States—"

The Court: "After December, 1929, Fritz von Opel never resided in Germany but lived successively in the United States, Belgium, and Switzerland."

I don't know about the next clause.

Mr. Gallagher: The record will show, and I think the Government will concede, that subsequently, from 1934 on, he became—

The Court: From 1934 he became a Swiss domiciliary. Between December, 1930, and August, 1939, he went to Germany for short visits.

Mr. Burling: If the "short visits" has any significance, would Your Honor add to his finding, "totaling about 10 percent of his time?"

The Court: All right.

Mr. Gallagher: No objection to that.

The Court: Ten percent of what time?

3063 Mr. Burling: Ten percent of the time between the date of the gift and his departure from Europe.

The Court: Maybe that will do it.

"Between December, 1930, and August, 1939, he went to Germany for short visits totaling about 10 percent."

Mr. Boland: The next finding, Your Honor, is finding No. 7, which has to do with the Liechtensteinean citizenship of Fritz von Opel. It seems that findings Nos. 7, 8, and 9 fall more or less in the same category, generally, with respect to what I am going to say.

The Court: Mr. Boland, I do not think I can find that his purpose in acquiring Liechtensteinean citizenship was his desire to sever his ties with Germany. I feel pretty definitely that his purpose was to get membership in a neutral country, that would make possible some of the things he is trying to do now.

Mr. Boland: Your Honor, the record shows, in Mr. Henggeler's affidavit, if you recall, specifically that Fritz and Margot von Opel wanted to renounce their German citizenship, and Margot von Opel, who was a Government witness, testified that they wanted to renounce.

This aspect of the purpose for which he acquired his Liechtenstein citizenship is going to be argued by Mr. Gallagher. Just basically I might state that at the time all these questions came up about Liechtenstein, you will 3064 recall that we made serious objection to questions being asked as to what the color of the Liechtenstein flag is, what date they last had their constitution revised, and so on and so forth.

The purpose given by Mr. Burling at that time was as an indication that perhaps the manner in which the citizenship was acquired would lead this Court to the conclusion that Fritz von Opel had in fact applied to the German Government for the retention of his German citizenship, and that was the purpose for which these questions were asked.

However, when we read Your Honor's opinion, we saw that the purpose had been turned into a question of allegiance and fealty. Had we been aware of the fact that Fritz von Opel's allegiance had been in issue in this case, we may rest assured that we had more than several wit-

nesses to bring here on the question of allegiance. As a matter of fact, we have before us some twenty-three affidavits on the allegiance of Fritz von Opel by outstanding people, such as General Eichelberger's brother, who was commandant of West Point during the war, and by the author of All Quiet On The Western Front. All those affidavits were in the hands of the Government.

But it is unquestionable, from the standpoint of the allegiance of this man, that had we known of his allegiance being in issue, we would have brought witness after witness—Jewish refugees who were here, and subsequently became United States citizens—to attest how this man felt about the German Government.

As a matter of fact, it seems to me clear that the whole purpose of Fritz' leaving Germany and remaining away and acquiring Swiss domicile after the Nazis came to power in 1934 could only be for two purposes: either that he was disgusted with the Germans and wanted to stay in Switzerland and stay away from Germany, or that he wanted to maintain this credit that he had in American currency and keep it away from the Nazi Government.

The Court: Let me tell you the way the man impressed me on the record. I would have thought that most anyone else would agree to this situation. When you try to determine enemy taint, you don't look only to the cloak of citizenship that a man carries. Hitler might have taken out Liechtensteinean citizenship in order to accomplish several or certain of his decisions. He might have done it. Yet if he came in here immediately after the end of the war and claimed that he was a type of citizen, we would certainly say he had taint because his fealty was to Germany. It seems to me that that is one circumstance to be taken with every other circumstance in the case, not by way of an absolute bar. I mean I never did reach that point, but I am recognizing for the purposes of this case, tentatively at least, that going through that formal proposi-

tion that is effective under the laws of Liechtenstein, 3066 would give him a right to keep the money, provided you did not have other circumstances in the case that showed him hanging onto that property, with a tendency to clear it back into Germany. That is the way I dealt with it.

It seems to me, as I remember it, although you complained about the testimony to some extent, that the father was close to Hitler, and Fritz was close to his father, and he made certain—at least, I found in my own mind that he made certain statements, that it would be a short war if one came, and he would have a part in devising these bombs. He had been reared in that country. You would expect him to love it. That is not against him. I would love my country if I had been in it for 30 years.

With all that tendency, notwithstanding the cloak of citizenship, there was taint. That was the manner of my approach to it. He was well thought of in Germany. He was a sportsman and represented them. He made his fortune there and had relatives and friends there. His father was at least subservient to Hitler and that regime and prominently displayed it. The most natural thing in the world is that he would have fealty to his country. That did not condemn him at all, but, along with the other facts in the case, it showed enemy taint. That is the only way I dealt with it. That is the way I wrote it.

If that stood alone, the mere fact that he maintained 3067 an affection for his country and his parents and everybody who was over there—all his relatives—if that stood alone, and he was a citizen of Liechtenstein, it might very well be that he would not be barred from recovery. I did not pass on it one way or the other. I left that out. But that did seem to me—that meaning along with all these other facts—to go to make up what the Supreme Court calls taint.

Mr. Boland: The Supreme Court in discussing the question of enemy taint was discussing a corporation. That was the problem involved before the Supreme Court—namely, this corporation; and prior to the decision in our case in the Supreme Court—

The Court: It is corporate securities. That is the taint. It is property taint.

Mr. Boland: Yes.

The Court: If the owners are tainted, then the property is tainted.

Mr. Boland: The problem presented to the Supreme Court was, namely, this: whether or not, for a Swiss neutral corporation—whether you could go behind the corporate veil and see who was actually running it. Having decided that the corporation was owned and controlled for economic warfare purposes—a Trojan Horse exclusively—Congress must have intended that that sort of set-up could not prevail and that you should be able to look through the corporate veil.

3068 The Court: That is right.

Mr. Boland: However, I think the Government will agree that the Supreme Court had no question of lifting the citizenship veil or of going into the subjective mind of each and every individual in the United States from all over the world, saying, "Well, you are pro-Italian, and Italy was an enemy of ours during the war; and you are an American citizen, or a British subject; you can't get your property back."

That was not the issue.

The Court: Of course it wasn't. They said that enemy taint had not been defined. But when you determine it, you take every single, solitary element. When you look into a proposition of that sort, you take every tendency. Standing alone, as I said, it may very well not be enough. I did not decide that. But taken with a whole lot of other facts, it would be.

Mr. Boland: There has never been a case in the history of the Trading-With-The-Enemy Act, both our own or the one from which it was copied, the English or British Act, of an individual who is a citizen, and by his citizenship goes under the Enemy Act—the courts have never looked into the subjective system of the individual and said, "You are barred from recovery." That has never been in issue.

The Court: No, and it is not controlling here. But let us use Hitler as an illustration. Let us say he took 3069 out Liechtensteinean citizenship, and let us say that that was all there was to it, and that he is a valid citizen under the laws of Liechtenstein. Then you would have one question, which is not the question in this case, as I determine it, certainly. But suppose you had Hitler taking out Liechtensteinean citizenship and then having property partially owned by his brother or his son, who is plainly a citizen of Germany, and that he had a controlling and very positive interest in it, and then you had a reversionary situation, and then you had this very corporation which claimed to own it, which had a subsidiary digging out material which was of help to Germany. Let us assume all those facts.

It certainly would be proper to show that Hitler had been dictated to there.

What we have to do in determining taint is to find out whether there is a tendency on the part of the holders of this property to take it back into Germany and to frustrate the whole purpose of this Trading-With-The-Enemy Act. Then you have to look at all the circumstances, not just that one standing alone. That is the way I approached it.

Now, I do not see how I can possibly hold that his acquiring that citizenship was to sever ties with Germany.

Mr. Boland: Mr. Gallagher is going to argue per se the allegiance aspect, and the one thing I want to call Your

Honor's attention to in findings 7, 8, and 9 is the fact 3070 that the manner in which Fritz von Opel acquired his citizenship by the payment of money is a speculative study of the statute. The way the finding is made, it would appear that Fritz von Opel through some devious method had paid for citizenship, which, of course, is obnoxious to the American mind.

The Court: Where is that finding?

Mr. Boland: You made that finding in your opinion about the payment of money.

The Court: I did not mean that. What do you want me to say in that regard?

Mr. Boland: As a matter of fact, Your Honor, it seems to me if your position is that a person having acquired citizenship through normal channels and normal means, and having the tendencies which you attribute to Fritz von Opel, would lead you to the same conclusions as you have come to in your opinion, then Fritz von Opel, having acquired his citizenship in the normal manner under the statute, that might well make the findings there of no significance.

We can point out specifically, for example, finding 8, in which you say that it took a special act of the legislature. Actually, Exhibit 177, which is the Act of Liechtenstein, says specifically that no one who is naturalized—acquires the citizenship through naturalization—can acquire that until it is approved by Act of Parliament. That is not any unusual circumstance, nor is it a special 3071 act of the legislature for Fritz von Opel which is out of the ordinary. It is provided for in the Act.

The Court: No. 7 is all right.

"On November 21, 1939, Fritz von Opel was naturalized as a citizen of Liechtenstein; however, the only times he was ever in Liechtenstein was when he was traveling through it. He has been in the United States since 1940."

Mr. Boland: Yes.

The Court: That is all right.

Mr. Gallagher: With one clarification, if I might suggest it, Your Honor, with No. 6, to the effect that the Liechtenstein naturalization law expressly permits the principality to waive the condition of residence—which it does.

The Court: Is there any objection to that?

Mr. Burling: Yes, Your Honor. If I may address myself a little more particularly to the significance of citizenship, I agree with Your Honor as to enemy taint. Of course, the factor of Fritz' fealty to Germany is a factor to be considered as one of the things making up enemy taint. I also think that the obviously quasi-fraudulent nature of his Liechtensteinean citizenship, the fact that it was a bare legal technicality, and the buying of the passport, as he said to Houghland, strengthen the quality of German nationality, whether or not Your Honor finds that he was still technically a German citizen as well as a Liechtensteinean citizen.

Of course, his acquisition of Liechtensteinean citizenship was highly abnormal. He himself testified as to the amount of money he paid; and putting that against the annual budget of the principality—the government—he paid something like 3 percent of the entire revenue of Liechtenstein that year.

Mr. Gallagher: I hesitate to interrupt, but Mr. Burling carried that throughout the hearing. Mr. von Opel pointed out very clearly that when he took the percentage of the total budget, he took the amount that was paid to Planken, which was the municipality, which is two-thirds of the price that was paid.

Mr. Burling: Then, taking that one—

Mr. Gallagher: And that mathematically it comes to the percentage which Mr. Burling gave for the total budget figures. Mr. Burling gave—

Mr. Burling: May I continue without interruption?